CAUSE NO. 198,892

State vs. Elmer Wayne Henley

Volume I - orig.

Motion to Suppress

TRANSCRIPT CONTINUED:

VOLUME XX

PAGES 3964 THRU 4459

THE CONSPIRACY ARCHIVES

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CAUSE NO. 198,892

THE STATE OF TEXAS	:	IN THE 176TH DISTRICT COURT
VS.	:	OF HARRIS COUNTY, T E X A S
ELMER WAYNE HENLEY, JR.	:	NOVEMBER TERM, A. D. 1973.

HEARING ON MOTION TO SUPPRESS

FILED
April 23, 1975
11:15 a'clock
..... o'clock ....M.
ELTON R. CUDE
Clerk of the District Courts,
Bexar County, Texas
By: Clara Bond

FILED IN
COURT OF CRIMINAL APPEALS
OCT 20 1976
Glenn Haynes, Clerk

3964

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CAUSE NO. 198,892

THE STATE OF TEXAS	:	IN THE 176TH DISTRICT COURT
	:	
VS.	:	OF HARRIS COUNTY, T E X A S
	:	
ELMER WAYNE HENLEY, JR.	:	NOVEMBER TERM, A. D. 1973.

* * * *

A P P E A R A N C E S:

For the State of Texas: Mr. Carol Vance
Mr. Donald Lambright
Mr. James Brough

For the Defendant: Mr. Will Gray
Mr. Edwin Pegelow
Mr. Charles O. Melder

Also Present: Mr. Ted Musick, Attorney for Defendant David Owen Brooks

* * * *

BE IT REMEMBERED that upon this the 14th day of January, A. D. 1974, the above entitled and numbered cause came for Hearing on Motion to Suppress before the Honorable William M. Hatten, Judge of the 176th District Court of Harris County, Texas; and the State appearing by counsel and the Defendant appearing in person and by counsel, announced ready for the hearing; and all preliminary matters having been disposed of, the following proceedings were had, viz:

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THE COURT: All right. All of you, raise your right hands, all of you that are witnesses in Cause No. 198,892, and be sworn, please.

(All witnesses present in the courtroom were administered the oath by the Court.)

MR. GRAY: We invoke the rule, Your Honor.

THE COURT: All right. All of you remain in the courtroom just a minute, please, all of the witnesses. All right. The rule has been invoked, which simply means that you must not remain in the courtroom. You will remain outside of the hearing of the Court. You will not discuss the case among yourselves or allow anyone to discuss it with you, except that you may discuss it with any of the lawyers on either the State or the Defendant's side. But if you should discuss it

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with any of the lawyers, then likewise it will be without the hearing of anyone else.

Probably this is repetitious for most of you, but unfortunately sometimes people misunderstand what being under the rule means. The sole purpose is that a witness may be able to testify without another witness hearing that testimony. So, consequently, if the witness could testify and then go out and discuss the case with a witness who is outside or someone else carry that testimony, it would defeat the purpose. So don't discuss the case among yourselves or allow anyone to discuss it with you.

We will call you as quickly as we can reach you. You will remain outside. I think we have set aside both the hallway here on my left and that in the front of the courtroom for the witnesses.

All of those who have been sworn and intend to be witnesses will

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remain outside.

Who is your first witness?

MR. GRAY: Your Honor, in that connection, Mr. Ed Pegelow, one of the Defendant's lawyers, will be a witness on this pre-trial matter. I wonder if he could be excused from the rule?

THE COURT: What's his testimony?

MR. GRAY: His testimony is that the police wouldn't let him see his client during the critical aspect of this proceeding and during the time material to the confessions.

Do you have any objection?

MR. VANCE: Your Honor, we have no objection.

THE COURT: All right. There is no objection; then the rule will be waived as to Mr. Pegelow.

All right. The rest of you remain outside. We will call you as quickly as we can get to you, please.

Mr. Gray, do you want to take these up in the order in which you have got them filed? Number one first?

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MR. GRAY: Well, Your Honor, let me see here. What does the Court have as number one, Your Honor?

THE COURT: All inculpatory oral statements made to Detectives Mullican and Smith --

MR. GRAY: Yes, Your Honor.

THE COURT: -- of the Pasadena Police Department.

MR. GRAY: I think we will have to take them depending on which officers are available and so I would like to take them all up at once. I think it all will probably be judged on the totality of the circumstances, Your Honor, as to both the oral and written statements.

THE COURT: All right, sir.

MR. GRAY: Now, do I understand the Court that we're announcing ready only on the pre-trial proceedings this morning; is this correct? Is that all the Court is taking up this morning?

THE COURT: Yes, sir, just those dealing with your motion to

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suppress, oral and written.

MR. GRAY: We are ready on that pre-trial motion then, Your Honor, and we would call Mrs. Henley as our first witness.

THE COURT: Is the State ready?

MR. VANCE: Yes, we are ready.

THE COURT: Are you going to go ahead and move forward?

MR. GRAY: Sir?

THE COURT: You are going to go ahead and move forward at this time?

MR. GRAY: Yes, Your Honor.

THE COURT: Is it agreeable with the State?

MR. VANCE: Yes, sir.

THE COURT: Were you sworn, please, ma'am?

THE WITNESS: No, sir.

THE COURT: Raise your right hand and be sworn.

(The witness was administered the oath by the clerk of the court.)

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MR. GRAY: May we proceed, Your Honor?

THE COURT: Please.

THE CONSPIRACY ARCHIVES

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MARY PAULINE HENLEY,

the witness, called to testify by the Defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

Q Tell us your name, please, ma'am.

A. Mary Pauline Henley.

Q Would you speak up so the Judge can hear you and so we can hear you?

A. It's Mary Pauline Henley.

Q All right. Where do you live, Mrs. Henley?

A. 325 West 27th.

Q Pull that microphone around just a little.

A. This way? 325 West 27th.

Q That's here in Houston?

A. Yes, sir.

Q Are you married, Mrs. Henley?

A. No, sir.

Q Divorced?

A. Yes, sir.

Q Do you have any children?

A. I have four boys.

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Q. What are their names, please, ma'am?

A. Vernon, Ronald, Paul and Wayne.

Q. Now, when you say Wayne, are you speaking of Elmer Wayne Henley, Jr., the Defendant in this case?

A. Yes, sir.

Q. How old is Elmer Wayne Henley at this time, ma'am?

A. Seventeen.

Q. What's his birth date?

A. May 9th.

Q. What year?

A. '56.

Q. How old was he back in August of 1973?

A. Seventeen.

Q. Was he living at home with you at that time?

A. Yes, sir.

Q. Along with the other children?

A. Yes, sir.

Q. In the divorce that you obtained from Mr. Henley, were you awarded custody of these --

A. Yes, sir.

Q. -- four boys? And you have had their custody since that time?

A. Yes, sir.

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Q Let me ask you this, Mrs. Henley: Did you have an occasion to hear from or about Elmer Wayne Henley back on August the 8th of 1973?

A. At 6:30 p.m., he called me.

Q 6:30 p.m.?

A. Yes, sir.

Q That was on August the 8th?

A. Yes, sir.

Q How did he call you, by telephone?

A. Yes, sir, on Channel 2 News radio phone.

Q On what phone?

A. Big 2 News.

Q Big 2 News, what's that?

A. That's a news car that was on the scene. They let him use their phone to call me.

Q Did he tell you he was calling from a Big 2 News phone?

A. No, sir. I didn't know where he was calling from at first.

Q Did you have a conversation with him at that time?

A. Sort of.

Q Did you later see this filmed episode on the television?

A. Yes, sir, five minutes after I hung up the

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phone.

Q. Was your conversation with Elmer Wayne Henley reproduced on television?

A. Most of it.

Q. Did you have any conversation with your son at that time about getting him a lawyer or coming to see him on anything like that?

A. I asked him could I come and see him. And he said the police would call me when I could come.

Q. The police would call when you could come see him?

A. Yes, sir.

Q. Excuse me. What did you do after you completed this conversation with your son?

A. I just went all to pieces.

Q. Did you make any effort to go see him yourself?

A. I called my family lawyer. And he started trying to get me in to see him, find out where he was and when I could see him.

Q. Now, who is your family lawyer?

A. Samuel Plotkin.

Q. Samuel Plotkin?

A. Yes, sir.

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Q Had he represented you before?

A. Yes, sir.

Q How did you contact Mr. Plotkin? Did you telephone him or go by his office or what?

A. I don't know if I telephoned him or he telephoned me. The phone rang incessantly after that television show, and I don't remember who called who.

Q Did you have a conversation with Mr. Plotkin in reference to your son?

A. Yes, sir.

Q Did your son in this conversation over the television tell you where he was in jail, if he was?

A. He told me where he was at.

Q Where was he at?

A. He was at the boat shed.

Q The boat shed. And did he tell you that he was under arrest or the police were detaining him or something?

A. Yes, sir.

Q What did he tell you in that line about that?

A. He just told me he was -- he said, "It's all right, mama. I am with the police."

Q But that didn't satisfy you, did it? You wanted

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to get some assistance other than the police; is that correct?

A Well, yes, sir. They had had him all ten hours and didn't even call me.

Q After you had your conversation with Mr. Plotkin, did you go anywhere to try to see your son?

A No, sir. He said he'd find out and just as quick as I could go his wife would come and take me to him.

Q Mr. Plotkin told you that?

A Yes, sir.

Q Did Mr. Plotkin come back or his wife come back and talk to you after this?

A Not that night, but the next morning, his wife came and took me to Pasadena.

Q What time was that?

A About 10:00 o'clock Thursday morning.

Q That was on August the 9th?

A Yes, sir.

Q About 10:00 in the morning?

A Yes, sir.

Q Where was Mr. Plotkin at that time?

A He was in court.

Q His wife took you somewhere, you say?

A She took me to the police station in Pasadena.

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so I could see Wayne.

Q. Did you go to the police station there in Pasadena?

A. Yes, sir.

Q. Where did you go when you got out there?

A. We went into the front, and they gave me a pass and sent me around to the jail entrance, and I was with Wayne about five minutes.

Q. Did you have a conversation with him at that time?

A. Well, not much. He was incoherent. I just saw him and knew that he was pretty well off.

Q. Was he in a cell at that time or where was he?

A. But he was in a solid cell. It was just a solid box.

Q. What do you mean?

A. There was no bars or anything. The reason I remember is because he has clostrophobia and he was all to pieces, because he didn't have any way to see out.

Q. Well, did they have any windows in there?

MR. LAMBRIGHT: Your Honor, we are going to object to that and ask it be stricken from the record. It calls for an opinion on the part of

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this witness as to what he has that she is not qualified to give.

THE COURT: Overruled.

Q (By Mr. Gray) Are there any windows in this cell?

A. There was one little window in the door.

Q Did you talk to him through that little window?

A. No, sir. They took us in a booth, attorney's booth.

Q All right. You had a five minute conversation with him about 10:00 a.m.?

A. Yes, sir.

Q What did you talk to him about?

A. I just asked him if he was all right and what happened.

Q Did you tell him that you had employed Mr. Plotkin or were trying to employ Mr. Plotkin to represent him?

A. Yes, sir. And he asked me to get Mr. Plotkin and a doctor to him.

Q He said what?

A. Get Mr. Plotkin and a doctor to him as quick as I could.

Q What did he want a doctor for?

A. Well, he was sick.

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Q Now, you say he went all to pieces or something like that. Would you describe his condition to us, ma'am?

A. He was hallucinating. He was seeing people who weren't there. Doors were being opened from the wrong side. He just talked completely incoherent. He couldn't -- he didn't know the time. He didn't know how long he had been there.

Q Did you tell him you'd try to get a lawyer and a doctor for him?

A. Yes, sir.

Q Had he ever acted like this before?

A. Not like that, no, sir. I mean, he's nervous. I mean, he has always been a kind of nervous person, but he has never acted incoherent or seeing things.

Q This is the first time that had occurred as long as you have known him?

A. Yes, sir.

Q What kind of things was he seeing?

A. People opening the door of his cell from the wrong side and standing there laughing at him. They wouldn't say anything. They just stood there and laughed at him and then closed the

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door and then somebody else would come.

Q. All right. Was anyone present when you had this conversation with him?

A. No, sir.

Q. Did you have any conversation with any police officers while you were out there?

A. Yes, sir. Detective Mullican.

Q. Ma'am?

A. Detective Mullican.

Q. What was your conversation with Detective Mullican?

A. I told him that my lawyer was in court and couldn't possibly get there before 2:00 and he asked that Wayne not be questioned anymore. And I asked was it possible for Wayne to have a doctor, that he was not well at all and he needed a doctor to look at him.

Q. What did Mr. Mullican say?

A. He said Wayne didn't have to talk if he didn't want to, but they was going to question him anyway.

Q. Did you have one of Mr. Plotkin's cards with you at that time or not?

A. Yes, sir. I tried to leave it for Wayne. They said they would put it in his personal property,

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1 but they wouldn't let him have it.
2 Q. What other conversation did you have with Mr.
3 Mullican about the legal assistance for your
4 son?
5 A. I just told him that my lawyer would get there
6 as quick as he could get out of court and that
7 he wanted Wayne not questioned until he could
8 talk to him. Since Wayne was not rational he
9 was afraid to -- he wanted to talk to him, see
10 what shape he was in and get a doctor to him.
11 Q. Did you talk to any other officers out there?
12 A. No, sir.
13 Q. Did you later see Lawyer Plotkin that morning
14 or any time that day?
15 A. Well, I talked to him that afternoon.
16 Q. What time?
17 A. Well, it was about 3:30 I guess.
18 Q. By telephone or person or --
19 A. By telephone.
20 Q. Did you go to his office any time that day?
21 A. No, sir. He came to me.
22 Q. Did you find out later either that day or some
23 other day that Mr. Plotkin did not want to handle
24 this case?
25 A. Yes, sir. He told me --

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MR. VANCE: Never mind.

A. (By the Witness) He told me that night that he didn't think it would be good for his practice for his name to be associated with the case.

Q (By Mr. Gray) What time did that occur?

A. In the afternoon after he came back to the house from the courthouse, from the jail.

Q Was this after your conversation with him about 3:30?

A. Yes, sir. That was that night. He had been to the police station and tried to get through to Wayne and he tried again that night.

MR. LAMBRIGHT: Objection, Your Honor, hearsay.

THE COURT: Don't tell what he told you, ma'am. That would be hearsay.

THE WITNESS: Oh, I'm sorry.

Q (By Mr. Gray) If you will just answer my question, may we avoid this sort of thing; okay?

A. Okay.

Q At any rate, you had a conversation with him that night then?

A. Yes, sir.

Q This was still on August the 9th?

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A. Yes, sir.

Q. After this conversation, did you or did you not make any efforts to obtain another lawyer or a lawyer to represent your son?

A. I got -- I asked my pastor to help me find a good criminal lawyer, because I didn't know anything about it.

Q. And that led you to Lawyer Pegelow then?

A. Yes, sir.

Q. What time did you -- when did you first contact Attorney Pegelow?

A. It was Friday morning.

Q. All right. That would have been August the 10th?

A. Yes, sir.

Q. Do you recall what time that was?

A. Not exactly. It was pretty early in the morning.

Q. Well, 8:00, 9:00?

A. Around 9:00 or 10:00 I think.

Q. Now, during the interval from the last time you talked to Mr. Plotkin and he told you that he couldn't or didn't want to handle the case and the time that you talked to Mr. Pegelow, did you make any other efforts to contact your son?

A. Yes, sir.

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Q What did you do?

A. Well, I called -- he called me from San Augustine County.

Q When was that?

A. That was Thursday night.

Q What time was that?

A. That was about 8:30 or 9:00.

Q Did you have a conversation with him at that time?

A. He just told me he wanted me to know he was all right and he didn't have but a couple of minutes to talk. He just wanted me to know he was well.

Q Did you discuss this situation of the lawyers with him at that time?

A. No, sir. He just told me to get a lawyer. He left it up to me.

Q Is that what he said during this phone conversation you are telling us about?

A. He just said, "Mama, get me a lawyer."

Q All right. And then he said he was all right or something of this nature?

A. He said he was all right, not to worry about him.

Q Anything else in that conversation?

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A. He still was asking for a doctor. Other than that, that's all he had time to say.

Q. Still asking for a doctor?

A. Yes, sir.

Q. Did he say what was wrong with him?

A. No, sir. He just kept begging for a doctor.

Q. All right. Now, back to your initial conversation with Mr. Pegelow. It was 9:00 or 10:00 o'clock in the morning on August the 10th; is that your testimony?

A. On August the 9th, wasn't it?

Q. Well, was it Thursday or Friday?

A. Thursday.

Q. Now, I am talking about Mr. Pegelow, not Mr. Plotkin.

A. Oh, Mr. Pegelow. I'm sorry. Yes, that was Friday, August the 10th.

Q. All right. Did he come out to see you, or did you go to his office, or what?

A. They came out. I called them. They came out to me.

Q. All right. And did you at that time employ Mr. Pegelow and Mr. Melder to represent your boy?

A. Yes, sir. I did.

Q. So, as I understand your testimony then, Mr.

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1 Plotkin was your lawyer, representing you in
2 this matter up until sometime the night of
3 August the 9th?
4 A. Yes, sir. Now, he still tried to get in touch
5 with Wayne in San Augustine County.
6 MR. VANCE: Your Honor, we'll
7 object to what someone else may have
8 tried to do.
9 THE COURT: Sustained.
10 Q. (By Mr. Gray) And then the next day, the next
11 morning, Mr. Pegelow and Mr. Melder took over
12 the case?
13 A. Yes, sir.
14 Q. When you talked to your son out at Pasadena
15 on the 8th, was Mrs. Plotkin present or was
16 she waiting outside?
17 A. No, sir. She waited outside.
18 Q. All right. No one was present but you and your
19 son when you had the conversation in the lawyer's
20 booth?
21 A. That's right.
22 Q. Now, during this period that we are talking
23 about from your conversation with your son at
24 6:30 p.m. on August the 8th until you employed
25 Mr. Pegelow and Mr. Melder on August the 10th,

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what was your physical and mental condition as far as helping your son was concerned?

MR. VANCE: Your Honor, I object to that. It's not proper.

THE COURT: Sustained.

Q (By Mr. Gray) Did you have during this period we are talking about, Mrs. Henley, any large sum of money that you could go down and see Mr. Foreman or some famous lawyer to try to get some action for your son?

A. No, sir.

Q Did you have any money at all?

A. No, sir.

Q Did that have any effect on your efforts to obtain legal assistance for your son during this period?

MR. VANCE: Your Honor, I object to that.

THE COURT: Sustained.

MR. GRAY: May we have our answer for our bill of exception, Your Honor?

THE COURT: All right, sir.

A. (By the Witness) Yes. I had trouble getting a lawyer who wanted to take a case that way.

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Q (By Mr. Gray) All right. Did you have any conversation by telephone with your son after he called you from San Augustine on August the 9th?

A. Not after.

Q Did you later see him and, if so, when?

A. Friday night.

Q What time?

A. It was about 8:00 o'clock.

Q Where was he?

A. He was in Pasadena.

Q In the jail?

A. Yes, sir.

Q This was about 9:00 you say?

A. Yes, sir.

Q Did anyone go out there with you at that time?

A. My sister took me out.

Q Did you see Wayne at that time?

A. Yes, sir.

Q Did you have a conversation with him?

A. Yes, sir.

Q All right. Was that in a lawyer's booth again?

A. Yes, sir.

Q What was his physical and mental condition at that time, Mrs. Henley?

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A. Well, he was shaking all over. He couldn't stop. And he'd talk for a minute and then he would go to crying and go to something else. He didn't have a span of concentration on one thing.

Q. Anything else that you noticed unusual about his condition?

A. Well, just he was crying so hard and shaking. He had a bad cold. And he couldn't -- his nose was running. And he just was all to pieces.

Q. Has he in the past suffered from some sort of sinus problem?

A. No, sir, asthma.

Q. Asthma. Did you tell him at that time that you had gotten some lawyers to represent him?

A. Yes, sir.

Q. Did he tell you anything about how the police had been treating him during this period?

A. Well, outside of the fact that he was cold and didn't have enough clothes and things, he didn't say anything about his treatment.

Q. Well, of course, as I understand your testimony, you are not telling this Court that he appeared to have been beaten up or anything like this?

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A. No, sir.

Q. We are talking about his, as I take it, his mental condition?

A. His mental and physical condition, yes, sir.

Q. All right. During this period we are talking about, Mrs. Henley, did anyone from the Harris County District Attorney's office contact you or talk to you?

A. No, sir.

Q. Any other police officers that you had any conversation with other than Officer Mullican from the Pasadena Police Department?

A. I just talked to one detective that day they took him to Sam Rayburn, but I don't know his name. It was here.

Q. Was that a Houston detective?

A. Yes, sir.

Q. Or Houston police?

A. It was at the Houston police station.

Q. You had a conversation with him?

A. Yes, sir.

Q. Where did this occur?

A. At the Houston police station.

Q. When was this?

A. That was Thursday afternoon about 2:30, August

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1 the 9th.
2 Q. That was on August the 9th?
3 A. Yes, sir.
4 Q. What was the occasion for your going down and
5 talking to some detective at the Houston Police
6 Department?
7 A. Well, Wayne had called me from Pasadena and
8 told me that he had signed everything they
9 wanted him to and now I could meet him at the
10 Houston police station with a doctor and a
11 lawyer.
12 Q. Did he tell you what time you could meet him
13 then?
14 A. He told me they were leaving right then and
15 for me to leave right then.
16 Q. And you did that?
17 A. Yes, sir. I called Mr. Plotkin's wife and then
18 went straight to the police station.
19 Q. All right. Now, this was right after you had
20 seen him out there at Pasadena?
21 A. It was about four and a half hours later.
22 Q. When he called you?
23 A. Yes, sir.
24 Q. Well, let's go back now. What time did he call
25 you on August the 9th?

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1 A. About 2:30.
2 Q. Where did you go when you got down to the
3 Houston police station?
4 A. To the homicide division.
5 Q. This fellow you talked to, was he a lieutenant
6 or just a plain old vanilla detective?
7 A. Sir, I don't know. Wayne was gone. And I --
8 they had already took him to Sam Rayburn. And
9 I got real upset. And he just took me in his
10 office to talk to me, to try to calm me down.
11 Q. Do you know whether or not his name was Breck
12 Porter?
13 A. No, sir. It wasn't Mr. Porter.
14 Q. How did he go about calming you down?
15 A. He just told me there was nothing I could do
16 about it, that Wayne was seventeen and if he
17 was willing to go --
18 MR. LAMBRIGHT: Your Honor, this
19 is not relevant to any issues before
20 this Court. We object to how he calmed
21 her down.
22 THE COURT: Sustained.
23 MR. GRAY: Well, Your Honor,
24 we submit this is admissible on the
25 issue, particularly under the totality

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of the circumstances on the police treatment of this woman when she is trying to obtain assistance for her son while he is incarcerated and being held incommunicado by the police. And we are offering it for that purpose only.

MR. LAMBRIGHT: If it please the Court, a statement by this lady is not in issue before this Court. It's this Defendant's statement in issue. And we would submit any condition of this woman or any officers trying to calm her down wouldn't be relevant to any issue in controversy.

THE COURT: Sustained.

MR. LAMBRIGHT: Thank you, sir.

MR. GRAY: We object then, Your Honor, and may we have her answer for our bill of exception?

THE COURT: Yes, sir.

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BILL OF EXCEPTIONS

Q (By Mr. Gray) Now, what did he do about calming you down, ma'am? What did he tell you?

A. He just told me I might as well calm down and accept it, Wayne was seventeen and I had no control over it, and they were already gone.

Q. Anything else he told you?

A. No, sir. He got me a glass of water and told me to sit there till I felt better and walked out.

Q. He left you there with your glass of water?

A. With my mother.

MR. GRAY: All right. That's all we offer on the bill of exception, Your Honor.

We again submit that this is admissible under the totality of the circumstances.

THE COURT: Objection be sustained.

MR. GRAY: Note our exception.

THE COURT: All right, sir.

END OF BILL OF EXCEPTIONS

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DIRECT EXAMINATION

(Continued)

BY MR. GRAY:

Q Well, at any rate, when you met with this detective down at the Houston Police Department, is that the first time you learned or not that your son had gone to Sam Rayburn or somewhere?

A. Yes, sir.

Q And then I believe you testified that he called you later that night?

A. From San Augustine County.

Q All right. Did you have any conversation with any other law enforcement officers during this period?

A. No, sir, just Sergeant Ellis.

Q Who is Sergeant Ellis?

A. At the Pasadena police station.

Q When did you have a conversation with him?

A. Well, he was on duty anytime I went to visit Wayne.

Q Was he on duty out there on August the 8th or August the 9th when you went out there?

A. No, sir. I went in the morning. He worked in the afternoon.

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Q All right. When is the first time you saw Sergeant Ellis then?

A. Friday night.

Q Friday night?

A. Yes, sir.

Q Did you go out there Friday night for some reason?

A. Well, that was the only time. That was the first time they had let me see him since Thursday morning. He had been gone, and they called and said I could -- or I called out there and asked them were they back and he said yes. And I said, "Well, can I see him?" So they asked somebody there and said yes, I could come out.

Q All right. What time did you go out there, did you say?

A. It was about 8:30 or 9:00.

Q P.M.?

A. Yes, sir.

Q How long did you visit with your son then?

A. I think I stayed about a half an hour that night or maybe a little longer.

Q Now, this was already after you had contacted Mr. Pegelow and Mr. Melder and employed them

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to represent your son?

A. Yes, sir.

Q. Did you tell Wayne at that time that they were representing you?

A. Yes, sir.

Q. Do you know whether or not they had had an opportunity to visit him before this conversation?

A. Mr. Pegelow had gone out there.

Q. Do you know when he went out, of your own personal knowledge?

A. Well, just before I did.

Q. Was he out there when you were there?

A. Well, he was leaving or he was in the office upstairs. I knew he was there, but I didn't see him.

Q. From your conversation with Wayne, could you determine whether or not he had had an opportunity to talk to Mr. Pegelow?

A. Yes, sir. He had talked to him.

Q. All right. This was 8:30 or 9:00 p.m. on August the 10th, right?

A. Yes, sir.

MR. GRAY: Pass the witness, Your Honor.

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CROSS EXAMINATION

BY MR. VANCE:

Q Mrs. Henley, how far did your son, Wayne Henley, go in school?

A. The ninth grade.

Q And he is capable of reading and writing, is he not?

A. Yes, sir.

Q And would you describe him as a person of average intelligence?

A. Yes, sir.

Q Or perhaps a little more than average intelligence?

A. Yes, sir.

Q From having four boys and undoubtedly being around a good number of boys as you were raising these four sons, you would say that he probably would be in the upper half so far as intelligence of boys generally go, wouldn't you?

A. I don't know. He's emotionally mature sometimes, but then other times he acts like a little boy.

Q But I mean he is -- you said a while ago he is probably of above average intelligence so far

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as boys go in general that you have been around. Wouldn't that be a fair statement?

A. I guess so.

Q. And he has never had any difficulty in understanding the English language and what's being said to him, has he?

A. No. I don't guess so.

Q. Now, the first time that you heard from him I believe you said it was around 6:30 p.m. when he telephoned you at your house; is that correct?

A. Yes, sir.

Q. And I believe you stated that part of the conversation was on television and that part of it was not.

A. That's right.

Q. And about how long did he talk to you at that time total?

A. I wouldn't imagine over four minutes, but that hit me so, I wouldn't swear to that.

Q. You would imagine over four minutes?

A. Not over four minutes.

Q. Not over four minutes. Did he tell you at that time what they were doing there at the boat yard?

A. No, sir.

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Q He didn't mention why they were out there at this particular boat stall?

A. He told me that he had killed Dean, but he didn't tell me what they were doing at the boat shed.

Q He told you what? I'm sorry. I didn't --

A. That he had killed Dean.

Q Dean Corll?

A. Yes, sir.

Q How long had you known Dean Corll?

A. Well, I hadn't known him but about six months. I mean really known him. I had spoke to him before, but he hadn't started coming to our home till about six months before this happened.

Q Well, about how long had you known of him or known him to --

MR. GRAY: Your Honor, we are going to object to this. It is completely immaterial to the issue before the Court on the admissibility of the oral and written statements.

MR. VANCE: I withdraw that question, Your Honor.

Q (By Mr. Vance) Did he tell you anything as to why they were out at a particular boat stall in

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a remote area of town?

A. No, sir.

Q. Did he tell you the location?

A. He said it was out on Hiram Clarke Road I believe. I said, "Where Dean works," and he said, "No, not where he works."

Q. And I take it from your previous testimony that he was talking very rationally at that time?

A. No, sir, not exactly.

Q. But he did know exactly where he was?

A. Well, he called it a warehouse.

MR. GRAY: We object to that, Your Honor. It would call for a conclusion on the part of this witness as to what Elmer Wayne Henley knew at the time he made this call.

MR. VANCE: Counsel has asked question after question that calls for a conclusion, Judge.

THE COURT: Overruled.

Q. (By Mr. Vance) He told you that he was out at -- he called it a warehouse?

A. A warehouse

Q. Did he refer to the boat stall or the boat yard by any other name?

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A. No. I had heard of the warehouse before, because Dean worked on David Brooks' car there. But I thought it was a warehouse.

Q So you were aware that they, that Dean Corll and Wayne Henley and David Brooks, had gone out together to this particular location that Wayne Henley called you from?

A. Yes, sir.

Q And had you ever been out to this location to have any idea where it was?

A. No, sir.

Q But you had heard Wayne Henley speak of this location of the boat stall before?

A. He just said it was out close to where Dean worked, and Dean worked on Hiram Clarke Road.

Q And had he told you where this place was prior to the call on August the 8th at 6:30 p.m.?

A. Just it was out close to where Dean worked was all he ever told me.

Q But in response, if you would answer my question, had your son, Wayne Henley, ever told you about this boat stall prior to the night of August the 8th at 6:30?

A. He had told me about the warehouse, what he called the warehouse, yes, sir.

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Q So when Wayne called you at 6:30 p.m. on August 8th, he told you that he was there at that so-called warehouse?

A. Yes, sir.

Q And I believe you stated on direct examination that Wayne Henley told you at that time, "It's all right, mama. I'm with the police," words to that effect?

A. Yes, sir.

Q And he said he was all right at that time?

A. He said, "It's all right."

Q Well, didn't you as a mother inquire as to how he was; say, "Well, how are you?"

A. No, sir. I didn't. I was too shocked to ask how he was. I just asked where he was and could I come out there.

Q But he did use the words, "It's all right"?

A. Uh huh. Well, I said, "Wayne, what are you doing there?" He said, "It's all right, mama. I am with the police."

Q And he said this in a rational tone of voice?

A. Well, he was crying. He didn't sound right. I had to ask him who he was before I would even talk to him. That was on the news.

Q All right. And you talked to him for about

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1 four minutes at that time?
2 A. Yes, sir.
3 Q Now, I believe you said that you thought he was
4 pretty well off or he said he was pretty well
5 off then?
6 A. I didn't understand the question, sir.
7 Q Didn't you say a while ago that he was pretty
8 well off on direct examination? Perhaps you
9 didn't.
10 A. No, sir. I don't believe.
11 Q All right. He didn't go into any details at
12 that time with you as to why he was there at
13 the warehouse or the boat yard?
14 A. No, sir.
15 Q So did you make any calls to any other attorneys
16 other than Mr. Plotkin?
17 A. No. Mr. Plotkin was going to try to help me
18 get another.
19 Q So you did not call any other lawyers other than
20 Mr. Plotkin until Mr. Pegelow and Mr. Melder
21 got in the case?
22 A. Yes, sir. My lawyer helped me get in touch with
23 them. I mean, my preacher.
24 Q So the answer to the question then is: No, you
25 did not contact any?

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A. I did not talk directly to any others.

Q Any other lawyers. All right. Now, I believe you stated that you went to the Pasadena police station and had spent approximately five minutes with your son, Wayne Henley, the next morning. Was that correct?

A. Yes, sir.

Q And I believe you also stated that they took you to a lawyer's booth there where you had a private conversation?

A. I guess it was a lawyer's booth. They had four or five of them. I never had been in a jail before, so I don't know.

Q And how long would you say that you spent in the lawyer's booth with Wayne Henley at that time?

A. About five minutes.

Q And what terminated this visit?

A. They just told me my time was up.

Q And did Wayne Henley mention anything about having been out at the boat stall the night before?

A. No, sir. Of course, he asked me if I had heard it on television, and I said yes. And he just started crying. And I didn't ask any more

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1 questions, because he wasn't -- he didn't seem
2 to me to be fit to be questioned.
3 Q You didn't ask him anything about any of the
4 facts of any kind of case?
5 A. Not that day, no, sir.
6 Q And at the time that you talked to Wayne Henley,
7 it was a private conversation? There were just
8 the two of you in the room --
9 A. Yes, sir.
10 Q -- and no other police officers in there or any-
11 body else?
12 A. No. He was just standing outside the door.
13 Q You said you had never been to a jail prior
14 to this time?
15 A. No, sir.
16 Q You had never visited Wayne Henley in any jail
17 previously?
18 A. No, sir.
19 Q When did you tell Detective Mullican that you
20 wanted a lawyer for your son?
21 A. Right after I saw him Thursday morning.
22 Q Was this a very brief conversation or a long
23 conversation?
24 A. I guess I was in there about ten minutes.
25 Q What specifically did you tell Detective

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1 Mullican about this?
2 A. I told him where Mr. Plotkin was and why he
3 couldn't get there sooner and that he asked
4 that Wayne not be questioned any further until
5 he could get there. And I asked him if it was
6 possible to have a doctor to see Wayne. Other
7 than that, he just asked me about Wayne's
8 history, his medical history, why I was so
9 worried about his health.
10 Q. So Detective Mullican questioned you about Wayne
11 Henley's medical history?
12 A. Only why I thought he was sick.
13 Q. Did Wayne Henley tell you that he was sick --
14 A. Yes, sir.
15 Q. -- or that he was ill? What did he say was
16 wrong?
17 A. He said, "Mama, I need a doctor. I need a
18 doctor bad." He didn't say what was wrong, but
19 he was jerking all over.
20 Q. Did you ask him, say, "Well, what's wrong with
21 you? Does your stomach hurt?"
22 A. I said, "What's wrong?" He said, "I don't know,
23 mama. I am just sick and I need a doctor."
24 That's all he ever told me.
25 Q. So you have no way of knowing from what he said

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as to whether he was reacting to some physical illness or from some mental state, I take it?

A. No, sir. I don't know what was wrong with him.

Q. Now, Mr. Plotkin came by your house the night of August the 9th. That was the first time that you actually saw him, I take it?

A. No, sir. No. He came by Thursday morning real early to tell me he was going to court, but his wife would be in touch with Lieutenant Goad and when I could see Wayne, she would come and take me out there.

Q. All right. Then I believe you stated that you saw him again that night and he said that he didn't want to take this kind of case?

A. He said he wasn't able to take it.

Q. But that he would help get you somebody who would?

A. Yes, sir.

Q. Now, you saw your son again at 8:00 o'clock at night on Friday in the Pasadena jail when your sister took you out there; is that correct?

A. About 8:30 or 9:00.

Q. And how long were you with him at that time?

A. About thirty minutes.

Q. I take it that you had a fairly long conversation?

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A. Well, it wasn't a very coherent conversation, but it was longer than the first one.

Q. He was in a different cell then?

A. Yes, sir. He was in a padded cell.

Q. Did he tell you that he had been removed to a different cell, because he didn't like the first cell that he was in?

A. Well, they said he was moved, because it was a warmer cell.

Q. Well, did he tell you that he told him he was a little cold and they put him over into another cell where it was a little warmer?

A. He didn't know why they had moved him. When I asked why they had him in a padded cell, they told me, because it was warmer and he couldn't have any clothes.

Q. Well, he had on clothes; he was dressed?

A. He had on a pair of overalls, no other clothes, no socks.

Q. Now, you went down to the Houston homicide office on Friday afternoon, I take it?

A. No. That was Thursday.

Q. August 10th? I'm sorry. Thursday, August the 9th?

A. 9th.

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Q At about 2:30?

A. Yes, sir.

Q Or somewhere in there. Did you tell anybody down there -- did you call down there in advance and tell them you were coming down to homicide?

A. No, sir. Because he called me from Pasadena to tell me to meet him there.

Q And, in other words, Wayne Henley told you when he was in the Pasadena Police Department custody or jail that they were taking him over to Houston homicide office, told you where he was going?

A. He just said the Houston jail. And that's where they sent me when I got there.

Q Now, I believe you saw him again on Friday night, August the 10th, and spent some time with him; is that correct?

A. Yes, sir.

Q I believe you said over half an hour?

A. About half an hour.

Q And Mr. Pegelow was leaving as you got there?

A. He had been there.

Q Did Wayne Henley complain of any illnesses at that time?

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A. He had a cold. And he was hurting in his chest.

Q. Did you take that to be some asthma flare-up like he had had in the past?

A. I was afraid it might be, because he was cold.

Q. Did you ask him if he had any fever?

A. Yes, sir. He said he didn't know.

Q. Did you feel him, see if he felt hot?

A. I couldn't touch him. There was glass between us.

Q. And did he make any other complaints other than having a cold and some chest congestion?

A. Just -- and he said, "Mama, if they would just chain me to a tree and get me out of that solid room," and begging for a doctor.

Q. Did you know that he had seen a doctor while he was up there at San Augustine?

A. He told me when he called me that he saw a doctor.

Q. Did he also tell you the doctor said there wasn't anything wrong with him?

A. No. He didn't tell me that. The doctor gave him some medicine.

Q. Did he tell you what kind of medicine this was?

A. No, sir.

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Q. Did you ever make any request of any of the police authorities in the Pasadena Police Department or Houston Police Department with regards to any kind of medicine or suggesting any kind --

A. I asked them could I have his nerve pills refilled and bring them to him, but they said no.

Q. Who told you no that he couldn't have his nerve pills?

A. Detective Mullican.

Q. What did Detective Mullican say about that?

A. He said it had to come from a doctor there.

Q. So what were these nerve pills? What kind?

A. Valium.

Q. Thallium?

A. Valium.

Q. Valium?

A. Yes, sir.

Q. Valium is sort of a sedative, tranquilizer type of medicine?

A. Yes, sir.

Q. And I take it you told Detective Mullican that it was Valium you were talking about?

A. I just told him that we had some nerve pills

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1 and I could get Wayne's refilled. And he said
2 he couldn't have any medication from me.
3 Q. From him, Detective Mullican, but he could have
4 medication from a doctor?
5 A. A doctor, if I could get one out there. They
6 wouldn't take him to one. And I couldn't get
7 one out there.
8 Q. So outside of his condition of at times acting
9 excited or hysterical, the most physical
10 ailments that he discussed with you was the
11 fact that he had a cold; would that be a fair
12 statement?
13 A. He just said he was cold and his nose was
14 running. I asked him if he had a cold, and he
15 said yes. I said, "Are you going to have
16 asthma," and he said, "Not yet."
17 Q. He said he hadn't had any asthma attacks?
18 A. Not yet.
19 Q. So the most that he complained of to you about
20 his physical ailments or sicknesses was that
21 he had a runny nose and a cold?
22 A. He said he was sick, but he didn't know what to
23 tell me was wrong with him outside of the cold.
24 There was more than that wrong with him.
25 Q. Well, did he ever complain of any stomach pains

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or headaches?

A. He said he hurt all over, and he had a headache.

Q. Said he had a headache?

A. Uh huh, just said he hurt all over.

Q. You didn't tell us this before. When did he tell you that he hurt all over?

A. Well, when he was telling me he had a cold and he was cold, he said, "I ache all over."

Q. He ached all over or hurt all over?

A. Well, it's the same thing. He ached or hurt. I don't remember just exactly which word he used. In other words, he was hurting everywhere. He couldn't pinpoint his trouble.

Q. Every time you attempted to see him that he was present either at the Houston Police Department or Pasadena Police Department, you were able to see him?

A. Yes, sir.

MR. VANCE: That's all the questions I have.

MR. GRAY: We have nothing further from this witness at this time, Your Honor.

THE COURT: You want this

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witness to remain?

MR. GRAY: Yes, please.

THE COURT: All right, you will remain.

MR. VANCE: We want to be sure she is under the rule, Your Honor.

THE COURT: Yes.

MR. GRAY: I don't believe she was placed under the rule, Your Honor. She was just sitting there.

THE COURT: Mrs. Henley, let me admonish you that the witnesses are under the rule, which simply means that they must remain outside of the hearing of the Court, further that you do not discuss this case or any of your testimony with any of the other witnesses or with anyone else, except that you may discuss it with either, any or all of the attorneys representing the State or the Defendant alike. But if you should so discuss it with any of the attorneys, then likewise it will be without the hearing of anyone else, not in the hearing of anyone else. So you will

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remain with the rest of the witnesses.

All right. Supposing we stand recessed. We will reconvene at a quarter till 11:00.

Retire the Defendant, please.

(Brief recess.)

THE COURT: All right, gentlemen, call your next witness.

MR. GRAY: We would call Samuel Plotkin.

(The witness, Samuel H. Plotkin, was administered the oath by the clerk of the court.)

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SAMUEL H. PLOTKIN,

the witness, called to testify by the Defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

Q Tell us your name, please, sir.

A. Attorney Samuel H. Plotkin.

Q Where do you live, Mr. Plotkin?

A. 5806 Belrose.

Q Is that here in Houston?

A. Yes, sir.

Q You practice here in Harris County, Texas?

A. Yes, sir, 1906 Ashland.

Q I take it then you're duly licensed by the Supreme Court of Texas to practice law in the State of Texas?

A. Yes, sir.

Q How long have you been licensed to practice in this State, Mr. Plotkin?

A. In the State of Texas since 1960.

Q Have you had an occasion in the past to represent a Mrs. Henley?

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A. Yes, sir.

Q. Tell us briefly what you represented her on, Mr. Plotkin.

A. I represented her on her divorce action.

Q. When was that?

A. That was about 1970.

Q. Was a divorce granted along about that time?

A. Yes, sir.

Q. Do you recall whether or not that proceeding was filed against Elmer Wayne Henley's father?

A. Yes, sir.

Q. That was the final decree in the divorce?

A. Yes, sir.

Q. Tell me this, Mr. Plotkin: Have you also represented David Brooks' father in the past?

A. Yes, sir. I represented him in his divorce action.

Q. When was that?

A. I wouldn't know exactly, but it was prior to Mrs. Henley's divorce, probably four or five years before.

Q. All right. No connection between those two divorces?

A. No, sir.

Q. Did you have an occasion to hear from Mrs.

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Henley back in August of 1973, Mr. Plotkin?

A Yes, sir.

Q Do you recall when that was?

A Well, it was I would say around August the 8th.

Q What time of the day or night was it, sir?

A It was early in the morning before I went to my regular office hours.

Q You were at home at the time?

A No. I went to her house.

Q I see.

A Met her at her house early that morning prior to 9:00 o'clock when I usually open my office, which is right near her house.

Q All right. What time did you go by her house?

A Oh, I would say probably around 8:30, because I open up the office about 9:00.

Q Any particular reason why you went by there on this occasion?

A I had seen something in the Houston Post relating to Elmer Wayne Henley, Jr.

Q All right. Had you represented Elmer Wayne Henley, Jr. in some sort of juvenile proceeding in the past, also?

A Yes, sir, about a year before, about '71 -- no, '72, I'd say.

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Q Had you called Mrs. Henley before you went by or what?

A. No. I just went by on the way to the office, because I had seen this.

Q What had you seen?

A. I had read the Houston paper, the Houston Post, in the morning and I couldn't believe that Wayne was involved in something like this. And I went by to talk to her about it, give her some advice.

Q All right. At this time I take it then you were more or less the family lawyer for these folks; is that right?

A. I felt that way.

Q Did Mrs. Henley ask you to represent her son in this procedure?

A. That was my understanding.

Q All right. And this occurred about 8:30 the morning of August the 8th?

A. Yes, sir.

Q How long did you stay there and converse with Mrs.Henley?

A. I would say that we discussed it about a half hour at that time.

Q Uh huh.

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A. Then later on in the morning, Mrs. Henley went out to visit Wayne. And she came back to my office. And I took her home and we discussed it further.

Q. All right. After you left her home or even while you were there, did you make any effort to contact any police officers?

A. The first police officer I believe that I contacted was somebody in Pasadena, because she had told me that she had attempted to give Wayne my card and they refused it. And so I called them to ask them why. And, of course, he said it was personal property and the man could not be given personal property.

Q. This was someone in the Pasadena Police Department?

A. Yes, sir.

Q. What time did this conversation take place?

A. I would say it was -- I had a case at 1:30. I would say probably this was about 11:00 o'clock.

Q. 11:00 a.m.?

A. Yes, sir.

Q. On the 8th?

A. Yes, sir.

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Q Did you have anything set in court that morning?

A. Yes. I did.

Q Now, you said you gave Mrs. Henley one of your cards. What was the reason for that?

A. Well, I just wanted him to have it on him. Of course, I expected a lot of interrogation. And this was remind him to keep silent.

Q And did you instruct her or not to take the card out there and give it to him?

A. Yes, sir. I did.

Q Did you tell her anything else that she should convey from you?

A. Well, I told her to be sure that nobody coerced him into signing anything and that he shouldn't say anything and that she shouldn't say anything.

Q All right. And then I take it that you learned some time that morning then that they wouldn't give your card to him; is that right?

A. Yes, sir.

Q And then after that was when you called out there?

A. Yes, sir.

Q Do you know the officer that you talked to out there, Mr. Plotkin?

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A. It was one of three. It was either a Lieutenant Goad or a Detective Lawrence or Detective Mullican. In fact, I talked to officers quite a few times that week.

Q. Well, it was someone in homicide then?

A. It was one of those three gentlemen.

Q. What I am getting at, you didn't have a conversation with the desk sergeant or anyone like that?

A. No, no.

Q. It was someone --

A. I knew who to call.

Q. It was someone in authority?

A. She had told me she had -- after she had seen the boy and they had only let her see him five minutes that she was asked to go into an office in the Pasadena police station.

Q. Did you at that time tell whoever this was that you talked to out there that you were representing Elmer Wayne Henley?

A. Oh, yes. I did. They knew it.

Q. Did you tell them anything in reference to any further questioning of him or any questioning of him?

A. I don't recall a specific conversation, except

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I expressed my disgust with them in refusing a young boy like this, not letting a young boy like this have a card from his attorney, reminding him of his constitutional rights.

Q. Did you object to him not having his constitutional rights granted him?

MR. VANCE: Object to the leading nature. Counsel is constantly leading the witness.

Q. (By Mr. Gray) Tell us whether or not you told them that, Lawyer Plotkin.

MR. VANCE: I still object to the leading nature.

THE COURT: Don't lead the witness.

Q. (By Mr. Gray) Tell us what you recall of the conversation with either Lieutenant Goad, Detective Lawrence or Mullican, whoever it was you talked to.

A. I told them I thought he had a right to have my card with him at all times to remind him of his constitutional rights and that I thought that he wasn't doing the right thing in refusing to allow him to have it on his person.

Q. Anything else?

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A. Not that I remember. Oh, yes. I also told him that I thought that the mother should have had more than five minutes to talk to her son.

Q. Did you ask them whether or not you could see the boy?

A. Yes. I did.

Q. And what were you told, if anything?

A. I was told that I could, but that I should call before I came out.

Q. Did you make any definite arrangements to go out there and talk to this boy?

A. With the Pasadena police, are you asking?

Q. Yes.

A. Well, after he had been taken to Sam Rayburn that day, I called up and asked them if they would notify me when he came back.

Q. What day was that now?

A. Sir?

Q. What day are we talking about now?

A. I would say it was about probably the 9th.

Q. And you made a telephone call somewhere?

A. Yes, sir.

Q. Where did you call?

A. Well, first I called the Pasadena police, you know, to tell them to please call me when he

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came back. And a fellow said, well, he leaves at 5:00 o'clock. He didn't know if he could arrange it. I told him please leave word with whoever took charge of that office after, but they never did call.

Q. Well, in other words then, you asked whoever you talked to out at Pasadena Police Department to have Henley call you when he returned from Sam Rayburn?

A. No. They should call me, so I could just come right out there and see him.

Q. Had you known before that call that he had gone to Sam Rayburn?

A. Yes. I did.

Q. Where did you get that information?

A. I think the mother called to tell me that they were going to take him out to Lake Sam Rayburn and she gave me a couple of people that I could call.

Q. Is there any reason, Mr. Plotkin, why you didn't go out there on August the 8th after your conversation with Mrs. Henley at 8:30 a.m. on that date?

A. I'm trying to remember if that was the night that they had taken him to Lake Sam Rayburn.

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And if it was, therefore, he wasn't available out at Pasadena. He was out near Lake Sam Rayburn.

Q Well, are you saying then that the reason you didn't go out there and see him that morning was because they had taken him somewhere?

A. That evening, yes, sir.

Q When did you call? Where did you call, San Augustine or somewhere up in the country there?

A. Well, I remember that Mrs. Henley had given me the names of a Texas Ranger, Charlie Neel.

Q Did you call Charlie?

A. I called him at his home and at his office. And I left word with his wife to have her to have him call me.

Q Did he ever call?

A. No.

Q Who else were you supposed to call?

A. Well, that night I remember I was lying down. And I got a call from Mrs. Henley. And she gave me the number of Sheriff Johnny Hoyt. And I called out there. Well, she had called about 10:30. I guess it was a quarter of 11:00 by the time I got hold of the sheriff.

Q Where is Sheriff Hoyt located?

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A. Well, I know he is the sheriff of San Augustine. And I called him at his office and talked to him.

Q. Did you get ahold of him?

A. Yes, sir.

Q. What time was this?

A. I would say it was about a quarter till 11:00.

Q. This was on the 9th?

A. As far as I can recall.

Q. And you got the sheriff on the telephone?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What did you tell him, and what did he tell you?

A. Well, I told him I was the attorney for Wayne Henley and that he had just called his mother and asked me to call him and that I wanted to talk to him, because I felt I had a right to do so.

Q. What did Sheriff Hoyt say?

A. Well, he said that he was the sheriff in a small town and it was around 11:00 o'clock and that the boy was probably sleeping and he didn't want to disturb him.

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Q They had done rolled up the sidewalks?

A. Well, of course, I told him that the boy just had called me and I was sure he wasn't sleeping. And even if he was sleeping, I still felt I should be able to talk to him.

Q What did he tell you?

A. He said, "Well, if I went up there and tried to wake him up, I may wake some other people and I don't want to do that, because the people here go to bed early."

Q So he refused then. Is that what you are telling me?

A. He told me to call him at 7:30 the next day and I could talk to him as long as I wanted to.

Q 7:30 a.m.?

A. Yes, sir.

Q On the 10th?

A. I'd say around the 10th.

Q Well, did you get on the phone the next morning?

A. I got on the phone about 7:15.

Q Did you call Sheriff Hoyt?

A. I called him, but somebody up there answered, said that -- like I'd predicted, that he wouldn't be there -- he had gone out 5:15 or 5:30 with

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some young boy.

Q They get up early too, then?

A. I guess they do.

Q Well, I take it then you were not able to complete any telephone conversation with Wayne Henley in San Augustine?

A. No, sir. I was not.

Q At the time you made your first call up there on the evening of August the 9th, did that occur after you had had a conversation with Mrs. Henley?

A. Yes, sir.

Q And in the course of that conversation, did you learn that she had just talked to Wayne?

A. Yes, sir.

Q By telephone?

A. Yes, sir.

Q In San Augustine?

A. Yes, sir.

Q How much longer did you remain in this case?

A. Well, probably just another day or so.

Q Any particular reason why you got out?

A. Well, one reason, of course, is I had a light heart attack about two years ago, and my family were a little nervous about my health. And,

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of course, I felt that I could assist, but I didn't want to be the prime counsel in it.

Q Did you discuss this with Mrs. Henley?

A. Yes, sir.

Q Was that on August the 10th or do you recall what date it was?

A. It was either the 9th or 10th.

Q Did you do anything else on this matter other than what you have told us about, Mr. Plotkin?

A. The only other thing I could remember would be going down to the police station.

Q Which police station?

A. Houston police station.

Q When?

A. It was the day that Wayne Henley was being taken out to Lake Sam Rayburn.

Q This was before your call to San Augustine?

A. Yes, sir.

Q What time of day was it?

A. I would say it was about 4:00 o'clock. I was in trial. And it was right after this case ended in Judge Woodall's court. I would say it was about between 4:00 and 5:00 o'clock.

Q Where did you go, down to the Houston jail?

A. I went to homicide.

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Q And who did you talk to there?

A. I think his name is Lieutenant Breck Porter.

Q Was he the man in charge at that time?

A. Yes, sir.

Q What was your conversation with Breck Porter?

A. Well, I had called during the trial and --

Q During the trial in Judge Woodall's court?

A. Yes, sir. And asked him to hold Wayne Henley till I got there, that I was in trial.

MR. VANCE: Your Honor, I am going to object unless he can specify who he talked to. He said I asked them.

THE COURT: Sustained.

Q (By Mr. Gray) Was this Breck Porter that you asked?

A. Sir?

Q Was this conversation with Lieutenant Porter?

A. No. First I called and asked for Police Chief Short. And the girl, the PBX operator, would not let me talk to him.

Q Why not?

A. Well, she said he didn't handle these things. I told her who I was, but she said, "I will have to connect you to homicide."

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So she connected me to somebody at homicide. And I left the message for her to call. And I called my wife and had her call again.

Q And what message did you leave with the homicide division of the Houston Police Department?

A. To please keep him there till I got there, that --

MR. VANCE: Your Honor, we would ask if this could -- I mean, you don't leave a message with a department. You leave it with a person. And we would ask he try to pin down who this was, if he knows.

THE COURT: Sustained.

Q (By Mr. Gray) Do you know who you talked to?

A. I do know it was a young lady, but I didn't get her name.

Q Did she identify herself as being in the homicide division?

A. Yes, sir.

Q Of the Houston Police Department?

A. Yes, sir.

Q Did you leave a message with her?

A. Yes, sir.

Q You don't know her name?

A. No, sir.

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1 Q What was the message?
2 A. The message was please tell the person in
3 charge to hold Wayne Henley there until I
4 could get there, because I felt that he was
5 entitled to have his counsel present with him
6 at all times.
7 Q And I presume she took the message as far as
8 you know?
9 A. Yes, sir.
10 Q Did she say she would tell somebody that or
11 throw it in the wastebasket or what?
12 MR. VANCE: Well, this would
13 be speculative.
14 MR. GRAY: We withdraw that
15 question, Your Honor.
16 A. (By the Witness) I did talk to him later.
17 Q You talked to who later?
18 A. Lieutenant Breck Porter.
19 Q What time did you talk to Breck Porter?
20 A. That was, like I say, between 4:00 and 5:00
21 o'clock that day.
22 Q Well, then this conversation with the young
23 lady occurred earlier than that?
24 A. Yes, sir.
25 Q What time was that?

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A. Probably around 2:00 o'clock, I would guess.

Q. You had a recess, I take it, in the trial?

A. It was during the recess of that trial.

Q. All right. Now, you called Breck between 4:00 and 5:00, somewhere along in there?

A. Yes, sir.

Q. What did you -- what was your conversation with Lieutenant Porter?

A. Well, I was rather argumentative.

Q. Who was argumentative, you or him or both?

A. Well, maybe both.

Q. All right. What was it about?

A. I said that I had called. And he seemed to indicate that he knew that I had called, but that he was handling the Houston department, the Houston Police Department, end of it.

Q. End of what?

A. Of it.

Q. The Henley investigation?

A. Yes. And Wayne Henley was under the Pasadena jurisdiction. Therefore, he had no right to tell him what to do. And if he wanted to talk, that was fine with him.

Q. That was fine with Lieutenant --

A. Lieutenant Porter.

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Q -- Porter? Did he tell you whether or not they had had the boy down at the Houston police homicide division before that time?

A. They said he did. He had come from Pasadena to be identified by David Brooks. And he had already gone.

Q. And where did this identification take place?

A. It took place at the police station.

Q. The Houston police station?

A. Where David Brooks was.

Q. All right. What else did he say in reference to that?

A. Well, he was -- wanted to know if I wanted to fight about it, things like that, got up out of his chair. And I told him that I thought he was depriving the young boy of his right to have a lawyer present.

Q. Well, did you go over to the police station and have this conversation with Lieutenant Porter, or was it on the telephone?

A. Will you repeat that, please?

Q. Was your conversation with Lieutenant Porter on the telephone?

A. No. It was in person.

Q. You went over to the homicide division?

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A. Yes, sir.

Q. And he got up and wanted to know if you wanted to fight or something?

A. Yes, sir.

Q. What did you tell him?

A. I told him I wanted to fight for the boy's constitutional rights. I didn't want to fight him in person.

Q. Well, that didn't come to anything then. What else, if anything, did Lieutenant Porter tell you?

A. He told me that if the boy wanted to talk, he surely wasn't going to tell him to keep quite.

Q. Anything else?

A. And he made a lot of remarks indicating that he felt the boy was guilty and he didn't deserve any mercy and things like that. It was maybe a half hour conversation.

Q. And then you left, I guess?

A. Yes, sir.

Q. And then after that, you called up to San Augustine, I take it?

A. Yes, sir.

Q. Did you talk to any other police officers during this period from August the 8th to August the

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1 10th when you were representing Henley?
2 A. None other than I think that I have mentioned.
3 Q. Did you talk to anyone else out at Pasadena?
4 A. No, sir.
5 Q. Did you ever go out to Pasadena --
6 A. No. I didn't.
7 Q. -- to try to talk to anyone?
8 A. I didn't, because he was already out to Sam
9 Rayburn. And about that time, Mr. Melder said
10 that he could handle the situation. And I
11 didn't think we ought to have too many chiefs.
12 Q. So you turned in your headdress and left?
13 A. I just told them that Charlie Melder was a
14 good friend of mine.
15 Q. Did you have anything else to do with the
16 matter after that episode?
17 A. The only other thing was another call to
18 Pasadena rebuking this I think it was detective
19 for not calling me. And he said he had just
20 forgotten, but if I wanted to come out that
21 night, I could. But by that time, I was not
22 handling any of the matter.
23 Q. This was then after the 10th?
24 A. I think it was probably the 10th or 11th.
25 Q. Well, I take it you just called out there

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complaining then?

A. That's right.

Q. Because they hadn't delivered your message; is that right?

A. That's right.

Q. In your conversation with any of these police officers, did you have any discussion with them about Elmer Henley's physical or mental condition?

A. None, other than probably mentioning that --

MR. VANCE: Well, we would ask the place of the conversation, Your Honor, as to who he talked to and when and that the proper predicate be laid.

MR. GRAY: That's what we are trying to do, Your Honor. We are trying to find out if he had such a conversation.

THE COURT: Sustained.

A. (By the Witness) It was in telephone conversations with the Pasadena Police Department.

Q. Do you know who you talked to?

A. I can't remember which one of these three gentlemen that I talked to, but I told them

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that the boy was just a young boy and that he should have counsel present, he shouldn't be asked any questions until counsel was there.

MR. VANCE: Your Honor, we would ask that this be specified as to when and where this was.

THE COURT: Sustained.

Q (By Mr. Gray) Is this the conversation you had about 11:00 a.m. on August the 8th with either Lieutenant Goad, Detectives Lawrence or Mullican?

A. The first time, it was. That was about the first time.

Q And that's when this conversation took place?

A. Yes, sir.

Q That you just related?

A. Yes, sir.

Q Any others that you can recall at any other time?

A. No. I cannot recall right now.

MR. GRAY: Pass the witness, Your Honor.

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CROSS EXAMINATION

BY MR. VANCE:

Q Mr. Plotkin, I believe you have practiced law for about thirteen or fourteen years now; is that correct, sir?

A. In Texas, yes, sir.

Q And how long have you been practicing here in Harris County?

A. The same.

Q The same length of time. And you have handled criminal matters on other occasions, have you not?

A. Yes, sir.

Q And approximately how many criminal cases would you say you have handled during the course of an average year during this time?

A. Oh, I would probably say between ten and twenty. I am primarily a civil attorney.

Q But you would handle perhaps ten to twenty criminal cases a year over a thirteen year period?

A. I would imagine that would be about right.

Q Roughly. So you had probably handled several hundred cases or two or three hundred criminal

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1 cases?
2 A. Probably something like that, not more.
3 Q. And you have tried criminal cases before, have
4 you not?
5 A. Yes, sir.
6 Q. Tried them to juries?
7 A. Yes, sir.
8 Q. On a contested basis?
9 A. Yes, sir.
10 Q. And you had represented this Defendant, Wayne
11 Henley, before in juvenile court; is that
12 correct?
13 A. Yes, sir.
14 Q. And when was that that you had represented
15 him before?
16 A. It was around August, just not knowing the
17 specific date, but I would say around August
18 of '72.
19 Q. Did you ever represent him in any other court,
20 in any adult court?
21 A. No, sir.
22 Q. All right. Now, you were the one who went by
23 Mrs. Henley's house that morning?
24 A. Yes, sir.
25 Q. And this wasn't pursuant to a telephone call by her?

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A. No, sir. It wasn't, because I had just, as I stated, read the paper that morning. She lives right by the office.

Q. You had represented her on a divorce case going back to about 1970, --

A. Yes, sir.

Q. -- I think you said? So you stopped by there and spent about thirty minutes at that time --

A. Yes, sir.

Q. -- with her; is that correct? All right. Now, this was the first time that you had had any discussion with her or anybody in conjunction with this particular case?

A. Yes, sir.

Q. Did you ever go out to the Pasadena Police Department?

A. No, sir.

Q. Were you aware from what Mrs. Henley had told you that it was the Pasadena Police Department that was handling this case?

A. Yes, sir, because that's where she went.

Q. And that it was the Pasadena Police Department that had the Defendant, Wayne Henley, in custody?

A. Yes, sir.

Q. And that he was being held at the Pasadena jail?

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A. Yes, sir.

Q. And she or somebody had to tell you that either Detectives Goad or Lawrence or Mullican were handling the case and in on the case from the standpoint of the Pasadena Police Department?

A. Yes, sir.

Q. And so you called and talked to one of these persons at the Pasadena Police Department, but you are not sure which one, at 11:00 o'clock that day?

A. I don't recall the name, but I recall that it was the same person that Mrs. Henley had spoken to that morning.

Q. Mrs. Henley had told you that she had had a conversation that morning with somebody in homicide?

A. That's right. She had to go to his office and talk to him.

Q. And if that was Detective Mullican, then that was who you had talked to?

A. Yes, sir. That was.

Q. Now, did you discuss any arrangements with Mrs. Henley about taking this case and representing Wayne Henley, or was it just left open?

A. Well, we didn't have a signed power of attorney

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or anything like that. It was just an understanding that we had. After she came to Pasadena, she came to my office. We discussed the case, what we could do, how much the bond might be and the way we were going to handle it.

Q. Now, when did she come to your office, Mr. Plotkin?

A. That was that same morning after she had -- the same morning that I had been to her home and she had gone out to the police station. From the police station, she came back to my office.

Q. Now, that would have been -- I believe you have been saying August the 8th. But if the facts show that that was on a Thursday morning, the 9th, it would be Thursday morning the 9th; would it not?

A. If I recall, it was Thursday morning.

Q. What time was your hearing in court that day?

A. I recall it was at the police station and it was about, oh, some time in the morning. It wasn't at 9:00 o'clock. It was somewhere I'd say between 10:00 to 12:00.

Q. Well, what time did Mrs. Henley come by your

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office? You had seen her from 8:30 till 9:00 that morning. And then she had driven a fairly considerable distance, I take it, to the Pasadena Police Department, got back to your office and got back to your office prior to your going to court; is that it?

A. Yes, sir.

Q. The sequence of events?

A. Yes, sir.

Q. Then it's, what would you say, about a forty minute drive to the Pasadena Police Department?

A. I would say that.

Q. Take about perhaps even an hour and a half to get out there and get back, not counting any other time; is that correct?

A. Yes, sir. My court case for the afternoon was at 1:30, and it was before that.

Q. Now, you never really had any definite understanding that you would take this case and you would be representing Wayne Henley, did you?

A. It was my understanding that I was, if that's the question.

Q. It was your understanding from your conversation with Mrs. Henley that you were?

A. That I was the attorney for them in this case.

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Q For them? You mean for Wayne Henley.

A. For Wayne Henley and Mrs. Henley, protecting any of the rights of both individuals.

Q And so that would have been at some time after she had gone to the Pasadena Police Department and come back or been pretty close to noon, I take it, on Thursday, --

A. Yes.

Q -- the 9th?

A. After I talked to her, before she went out to Pasadena and after she went to Pasadena.

Q But you didn't decide to take the case until she came back from the Pasadena Police Department you said a while ago.

A. No. If I did, I want to retract that. I mean I told her that I would. It was my understanding that I was going to handle the case when I saw her early this morning, because she had no other attorney.

Q But you did not contact the Pasadena Police Department until she had come back from the Pasadena Police Department; is that correct?

A. Yes, sir. I believe that's correct.

Q And I believe you have said that you had given her a card to take to the Pasadena Police

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1 Department and to deliver to Wayne Henley?
2 A. Yes, sir.
3 Q So your first contact with any of the homicide
4 detectives or with Detective Mullican in this
5 case would have been some time around noon at
6 the very earliest on Thursday, August the 9th;
7 would that be a fair statement, giving her
8 time to go out there and back after you had left
9 her home around 9:00 that morning or a little
10 later?
11 A. I can't recall if I had talked to them sooner,
12 but I doubt it. I think it was after she
13 returned and I took her home that I called.
14 And she told me that they had, as I related,
15 only let her talk five minutes and refused to
16 let him have my card.
17 Q So at the time that you called the Pasadena
18 Police Department homicide office, so far as
19 you were concerned, you were representing Wayne
20 Henley?
21 A. I felt that I was.
22 Q Well, only you could know what's in your own
23 mind.
24 A. In my own mind, I was.
25 Q Could that call, the first call that you made

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to the Pasadena Police Department, be shortly before you left to go to this 1:30 or 2:00 o'clock court hearing?

A. It could be.

Q. But you don't know what time it was I take it from your testimony here.

A. The exact minute, you mean?

Q. Well, within fifteen or twenty minutes or approximately what time you made that call, could you give us a range like 12:00 till 2:00?

A. I would say between 10:00 and 12:00.

Q. You did not make any notation or written memorandum, I take it, of who you contacted in the Pasadena Police Department or the time of the telephone call; is that correct?

A. I did not.

Q. So all you can give us now is some kind of estimate it was some time before you left to go to this 2:00 o'clock court hearing or 1:30 court hearing?

A. Yes, sir.

Q. And I believe you stated on direct examination your main concern or main complaint with the person from the Pasadena Police Department that you talked to was the fact that he had not

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delivered the card to Wayne Henley?

A. That was one of the main complaints and the fact that they had only let him talk to his mother for five minutes.

Q. Now, you were familiar from that conversation and also from what Mrs. Henley had said that they had been questioning Wayne Henley and had taken him out to this boat rental stall the night before?

A. Yes, sir.

Q. And that they were questioning him the next day; is that correct? You were aware of that fact?

A. I wasn't aware of the fact they were questioning him before I had called them.

Q. The morning of the 9th?

A. Yes, sir.

Q. Which would have been Thursday?

A. That's right.

Q. You cannot say here today with any certainty that you specifically instructed anybody from the homicide department on around noon of the 9th when you first called out there for Detective Mullican or whoever it was you talked to to not talk to Wayne Henley any further,

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can you, with any degree of positive certainty?

A. I cannot say with positive certainty. I did tell them that I was the attorney, which they knew, and that I was coming out to them. And I asked them not to coerce the boy.

MR. VANCE: That's all I have.

A. (By the Witness) And that I thought he had a right to have my card.

REDIRECT EXAMINATION

BY MR. GRAY:

Q Now, Mr. Plotkin, did I understand that your wife was the one who drove Mrs. Henley out to the Pasadena Police Department on that morning?

A. Yes, sir.

Q Now, what aspect was this case in when you read about it or heard about it and then went over to see Mrs. Henley? Did that involve only the killing of Dean Corll, or did it involve any other matters?

A. Well, at that time, from the newspaper report, as I recall, it was only regarding the Dean Corll matter.

Q All right. And that really then at the time you

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1 got into the case, that was the only matter
2 you were concerned with?
3 A. That's right.
4 Q. You didn't know about any collateral matters
5 that might evolve from this investigation?
6 A. Not at that time.
7 Q. Now, when was it that you first learned that
8 there might be some other criminal charges
9 involving Elmer Wayne Henley, Jr.?
10 A. That was that Thursday after trial about 4:00
11 or 5:00 o'clock.
12 Q. Was that after your wife had taken Mrs. Henley --
13 A. Yes, sir.
14 Q. -- out to Pasadena?
15 A. Yes, sir.
16 Q. And after you had had your conversation with
17 either Lieutenant Goad or Detectives Lawrence
18 or Mullican?
19 A. Yes, sir.
20 Q. In your conversation with those officers up
21 to this point, did any of them inform you that
22 there might be some other criminal charges
23 involved in the investigation?
24 A. No, sir.
25 Q. As far as you knew, I take it then there was

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1 just this one case?
2 A. Yes, sir.
3 Q. What appeared to be a case of self-defense,
4 right?
5 A. Yes, sir.
6 Q. Now, after you found out that it involved a
7 whole lot more, is that when you called
8 Lieutenant Porter, or was that before or
9 after?
10 A. To pinpoint it, I would say it was the day that
11 they were taking Wayne Henley out to Lake
12 Sam Rayburn, whenever that day was. I recall
13 that incident.
14 Q. All right.
15 A. Because that's what I was trying to prevent.
16 Q. Of course, at that time time you knew there was
17 a lot more involved than the shooting of Dean
18 Corll?
19 A. Yes, sir.
20 Q. Now, did you know this before you talked to
21 Lieutenant Porter?
22 A. I knew that they were going to take him out to
23 Lake Sam Rayburn for the purpose of digging up
24 some bodies.
25 Q. All right. And, of course, you knew that at

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the time you called up there and tried to get him on the telephone in San Augustine, didn't you?

A. Yes, sir.

Q. Can you pinpoint the time when you first learned that the police had taken Elmer Wayne Henley, Jr. out to this boat shed?

A. That was the morning, I think Thursday morning, when I read it in the Houston Post.

Q. How did you ascertain that Elmer Wayne Henley was going to be brought down to the homicide division on that afternoon?

A. I believe that his mother had called the office.

Q. What office?

A. My law office.

Q. All right.

A. And she told my secretary that this was going to be done. And my secretary called me at Judge Woodall's court. And that's when I called homicide.

Q. Had you had any occasion to contact the Houston homicide division up to that time?

A. No, sir, because to my knowledge he was in Pasadena and under their jurisdiction.

Q. Did Lieutenant Porter tell you where they were

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taking Elmer Wayne Henley or where they had taken him or who had custody of him?

A. They said to my knowledge that he had released -- they had released Wayne Henley to the Pasadena police. They were taking him out to Lake Sam Rayburn.

MR. GRAY: We pass the witness, Your Honor.

MR. VANCE: Just a couple of other questions, Your Honor.

RECROSS EXAMINATION

BY MR. VANCE:

Q. Now, Mr. Gray has asked you what your state of mind or understanding was of any problems that this Defendant, Elmer Wayne Henley, had in conjunction with any case, and you have told us that you were primarily concerned with the killing of Dean Corll; is that your testimony? With any possible action that might be taken against the Defendant, Wayne Henley, as to the killing of Dean Corll.

A. I would say that's true, because I didn't know of any possible implication of Wayne Henley in

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anything else but that slaying, that particular slaying.

Q. Now, you didn't get into this matter in the least until you voluntarily drove over to Mrs. Henley's house after reading, I take it, the headlines on the front page of the Post about what had occurred the day before?

A. Yes, sir.

Q. And you saw in those headlines that approximately fourteen bodies had been recovered at a boat stall the day before; isn't that a fair statement?

A. I think that's a fair statement.

Q. And when you got over there and talked to Mrs. Henley, she related the conversation that she had had with Wayne Henley about the fact that he was out there the night before and had called in and part of it was on television and that he was out there with the police leading them to a bunch of bodies; isn't that correct?

A. We discovered that.

Q. Well, she told you that or you read it in the paper?

A. Also read it in the paper.

Q. But you were generally aware?

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1 A. I read it in the paper that morning.
2 Q. But you were generally aware that Wayne Henley
3 had led the police to the discovery of
4 approximately fourteen murder victims on the
5 preceding afternoon and evening; isn't that
6 correct?
7 A. Restate that, please.
8 Q. Isn't it a fair statement to say that you were
9 generally aware when you went by and talked to
10 Mrs. Henley that morning and after talking to
11 her that this Defendant, Wayne Henley, had led
12 the police to the discovery of approximately
13 fourteen bodies that were recovered at this
14 boat stall where he had called her from the
15 night before?
16 A. I was aware of that, but not any possible
17 implication of Wayne Henley with the bodies.
18 She wasn't either, I don't believe.
19 Q. It did not occur to you that Wayne Henley,
20 being the person that led the police to the
21 recovery of fourteen bodies might be a suspect
22 as a participant in those murders? Did that
23 occur to you as a lawyer, as a person who has
24 tried two or three hundred, handled two or
25 three hundred criminal cases, or not?

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A. Well, I can honestly say that it occurred to me that this might be something that she couldn't believe, but I could assume that there might be other developments.

MR. VANCE: That's all I have.

MR. GRAY: No further questions.

THE COURT: All right, sir, you may stand aside.

Call your next witness.

MR. PLOTKIN: May I be excused?

MR. GRAY: We have no objection, Your Honor.

MR. VANCE: It's fine with us, as long as he -- you are generally available, aren't you?

MR. PLOTKIN: Oh, yes.

THE COURT: Fine.

All right. Both sides are agreeable you may be excused, but remember you are still under the rule.

MR. PLOTKIN: Yes, sir.

THE COURT: And you will be available.

MR. PLOTKIN: Ten minutes notice.

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THE COURT: All right, sir.

MR. GRAY: May we approach the bench a moment?

(Conference at the bench out of the hearing of the court reporter.)

THE COURT: All right. You may retire the Defendant.

All right, ladies and gentlemen, as the Court explained to you earlier, Mr. Pegelow is in trial in another court and trying to work with that judge who has been kind enough to let him come over here, Judge Woodall. So we will stand recessed until tomorrow morning at 9:00 o'clock.

Will you tell all of the witnesses to be back at 9:00 o'clock in the morning, please.

(Day's recess)

THE COURT: Let's see, Mr.

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1 Gray, is Mr. Melder or Mr. Pegelow --
2 MR. GRAY: I haven't heard
3 from them, Judge. I don't know where
4 they are. If I could have a moment,
5 I will see if I can round them up.
6
7 (Brief interruption in
8 proceedings.)
9
10 MR. GRAY: I think maybe we can
11 proceed without them. Let me go out
12 here and talk with a witness just a
13 moment, and I will be right back.
14
15 (Brief pause in proceedings.)
16
17 MR. GRAY: Your Honor, I think
18 we can proceed. We have a sheriff here
19 from San Augustine and he needs to
20 get back to enforce the law up there.
21 We could probably dispose of him.
22 THE COURT: All right, sir.
23 Have you been sworn, sir?
24 THE WITNESS: No, sir.
25 THE COURT: All right, raise

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your right hand and be sworn, please.

(The witness, John Hoyt, was administered the oath by the clerk of the court.)

MR. GRAY: May we proceed, Your Honor?

THE COURT: Please.

THE CONSPIRACY ARCHIVES

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JOHN HOYT,

the witness, called to testify by the Defense, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

Q Tell us your name, please, sir.

A. I'm John Hoyt.

Q What is your business or profession, Mr. Hoyt?

A. I'm the sheriff of San Augustine County, San Augustine, Texas.

Q How long have you been sheriff up there, sir?

A. Since November, 1972.

Q What did you do before you got elected sheriff?

A. I was investigator for a law firm. I was a Texas Ranger, Liquor Control Board agent and deputy sheriff.

Q All right. You have been in law enforcement a pretty good while; is that right?

A. Yes, sir.

Q How long?

A. Approximately twenty, twenty-two or three years, something like that.

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Q How old a man are you now?

A I'm forty-eight, sir.

Q Let me ask you first, sheriff, whether or not you are the custodian of the jail records of San Augustine County?

A Yes, sir.

Q Does that include the booking records?

A Yes, sir.

Q Do those records indicate the time that an arrested person is booked into the jail?

A Yes, sir.

Q And when he's released by your jail?

A Yes, sir.

Q Does it also indicate when he is checked out from the jail for any purpose whatsoever?

A Yes, sir.

Q Did you in response to my subpoena bring those records with you?

A Yes, sir.

Q Do you have them with you?

A Yes, sir.

Q I take it these records are kept in the regular course of your duties as sheriff of San Augustine County?

A That's correct, sir.

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Q And all the entries indicated on this card were true and correct at the time they were made?

A. Yes, sir.

MR. GRAY: May we have this marked, please as Defendant's Exhibit No. 1 for identification purposes.

(Defendant's Exhibit No. 1 was marked for identification purposes by the court reporter.)

Q (By Mr. Gray) Are these all the records you have from the jail, sir?

A. Yes, sir. That's my jail record that I keep on each prisoner that comes in and goes out.

Q Are you telling me that you do not have any records in the jail showing when a prisoner is booked into the jail?

A. Well, sir, I think you will note that this shows that almost in its entirety.

Q Does this purport to be an arrest record? That's not a booking record in the jail, is it? Isn't that a separate and distinct record

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that's kept and required to be kept by every jailer in the State of Texas?

A. Well, sir, we're a small country county.

Q. Are you saying the law doesn't apply to a small country county?

MR. VANCE: Your Honor, that's argumentative. I object to it.

THE COURT: Sustained.

A. (By the Witness) Well, sir, we do the best we can. We don't have elaborate setups like metropolitan areas. We are a poverty county.

Q. (By Mr. Gray) Have you ever looked at the booking records down here in Harris County?

MR. VANCE: Well, Your Honor, it's immaterial whether he has looked at other booking records.

THE COURT: Sustained.

MR. GRAY: We want to show by this line of questioning that these records are not elaborate. All they have is a book.

MR. VANCE: Well, the records speak for themselves, Your Honor, if they are introduced.

THE COURT: Sustained.

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Q (By Mr. Gray) When was Elmer Wayne Henley turned over to your custody, Sheriff Hoyt?

A. Well, sir, we met that afternoon.

Q. Where did you meet this young man?

A. At 5:30.

Q. Where did you meet him?

A. At what we call the long bridge between Zavala and Broaddus, Texas, on Lake Sam Rayburn, sir.

Q. Where is this, out under an oak tree or where?

A. Well, sir, there are a lot of trees, pine trees, oak trees, a lot of water, too.

Q. Right. Well, whereabouts did you meet this man?

A. Well, sir, we met there at the bridge coming into my county.

Q. Who did you meet there?

A. I met some officers from Pasadena and some from Houston, the sheriff from Lufkin and a couple of Texas Rangers.

Q. Give me the names of all those officers, please, sir.

A. Well, sir, I can give you the names of some of them. I don't think I could give it all without going back of course and getting my records, additional reports.

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Q Do you have those additional reports with you?

A No, sir. I have got so many it would take two suitcases to really bring everything I have got.

Q How long would it take you to get those records together and bring them down here in response to our subpoena, Sheriff Hoyt?

A Well, sir, I brought -- I have -- most of my stuff I fix up and send to my district attorney. And he has access to more than I have. I furnished him everything possible in the cases.

Q Give me the names of officers that you recall.

A Sheriff Pete McBride of Angelina County.

Q All right.

A Texas Ranger Charles Neel, Lufkin, and N. W. Clark, Texas Rangers stationed in San Augustine.

Q What's his name?

A N. W. Clark.

Q All right.

A Two detectives -- I don't recall their names offhand -- from Pasadena. I seen the gentlemen yesterday out in the hall.

Q You don't recall their names?

A No, sir, not right offhand.

Q Well, let me see here. Was one of them a

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Lieutenant Goad?

A. No, sir. I don't believe it was a lieutenant.

Q. Detective Lawrence?

A. I believe that's correct, sir.

Q. And Detective Mullican?

A. Yes, sir.

Q. You believe it was Lawrence and Mullican?

A. I believe so, yes, sir.

Q. All right. At any rate, you saw them here outside the courtroom?

A. Yesterday, yes, sir.

Q. All right. Who else, sir?

A. I believe there were two or three from Lieutenant Porter's homicide office here in Houston P.D. I don't exactly recall their names. Like I said, there were so many people, but I know there were two, possible three from Houston homicide.

Q. Two or three Houston officers. Were there any other Pasadena officers other than Mullican and Lawrence?

A. Not to my knowledge, sir, from Pasadena.

Q. Any other Texas Rangers other than Neel and Clark?

A. No, sir, not that I know of.

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Q And three, were these detectives from the homicide division of the Houston Police Department?

A. Yes, sir.

Q But Lieutenant Porter wasn't there, was he?

A. No, sir.

Q And you don't recall the names of those detectives?

A. No, sir.

Q Any other law enforcement officers there?

A. Yes, sir. There was some of my deputies there.

Q How many?

A. Richard Davis I believe, who is a colored deputy I have.

Q A black deputy?

A. Yes, sir. And Mr. Charles Martin, Robert McCroskey and --

Q Who?

A. -- two Highway Patrolmen.

Q What were their names?

A. Richard Wakefield and Tom Maddox.

Q Tom Maddox?

A. Yes, sir.

Q Where are they stationed?

A. Stationed in San Augustine.

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1 Q San Augustine?
2 A. Yes, sir.
3 Q All right. Anybody else that you can recall?
4 A. A lot of the news media, you know, lots of
5 those people.
6 Q They all met there at the bridge, too, huh?
7 A. Well, we started at the bridge, it looked like
8 there was several carloads there when I met
9 them at the bridge.
10 Q Several carloads of news people?
11 A. There were, along with the other officers from
12 Houston and Pasadena when I met them there,
13 yes, sir.
14 Q Do you recall any of the names of those folks?
15 A. Well, it was one I remember in particular from
16 San Augustine, was Sam Malone, publisher of
17 the San Augustine Rambler.
18 Q San Augustine Rambler?
19 A. Yes, sir.
20 Q All right. Who else?
21 A. At that particular time, that's the only one
22 I think I can call his name. Later, a man I
23 know here with the news media, Mr. Bob Wolfe,
24 came into the scene with some more in a
25 helicopter.

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Q There was a bunch of them there, right?
A Yes, sir.
Q Any other law officers around?
A I'm sure perhaps there were. I don't recall. Just the ones I have told you, sir.
Q About how many more were there whose names you can't recall?
A I wouldn't say there were many more.
Q Two or three, five, ten?
A I have no idea, you know, a lot of spectators, news people.
Q Spectators. Where did these spectators come from? Did they live around the bridge there?
A I often wonder myself, sir, where they come from at these scenes.
Q Anyway, a bunch of them showed up, huh?
A Yes, sir.
Q Who had custody of Elmer Wayne Henley at that time?
A The Pasadena officers.
Q All right. Now, that's Mullican and Lawrence?
A I believe that is correct, sir.
Q Was he in a police car with them?
A Yes, sir.
Q Was David Brooks there?

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A. No, sir.

Q. Did he come before or after this, or did he come up there at all?

A. He hadn't been up there yet.

Q. Not yet?

A. No, sir.

Q. What time did you say this was?

A. 5:00, 5:30, perhaps in the afternoon.

Q. All right. Did Lawrence or Mullican tell you what time Mr. Henley had been arrested?

A. No, sir, I don't believe.

Q. What date was this anyway that we are talking about?

A. It was the 9th of August.

Q. August the 9th?

A. Last year, yes, sir.

Q. August the 9th?

A. Yes, sir.

Q. Nobody told you what time he had been arrested?

A. No, sir. I don't think we discussed that.

Q. All right. After you had this big confrontation at the bridge, did you take him to San Augustine and book him into the jailhouse?

A. No. He kind of took us on a wild goose chase for a few minutes.

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Q You mean he got away from you or what?

A. No. But he took us the wrong way from where the bodies was.

Q So then the answer is: You didn't take him and book him in the jail; is that correct?

A. He told me he was going to take me and show me some bodies.

Q Yes, sir. But the answer to my question is that you did not take him and book him into the jail when you took custody of him at the bridge; is that true or false?

A. I didn't book him in the first time I seen him, if that's what you are referring to.

Q So the answer is: No, you didn't; is that right?

A. I didn't book him in at that time, no, sir.

Q When did you book him into the jail?

A. Oh, I'd say approximately 9:00 o'clock that night.

Q That's 9:00 p.m. on August the 9th?

A. Yes, sir.

Q Is there anything on that card there that indicates when he was booked into the jail?

A. I see he was released. I don't see what time it says he was booked in.

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Q Do you have any little pieces of paper up there at the jail that would show when he was booked in?

A No, sir, but I think it was about fifty or sixty news media that you could subpoena if you'd like that could tell you what time he was booked in.

Q Well, you understand under the Texas law, the news media doesn't have the duty of keeping jail records, don't you?

A That's right, sir. But I find them to be pretty reliable people.

Q So you don't have any records that show when you actually booked this young man into the jail?

A I brought the record I have, sir.

Q And that's the only record you have?

A Yes, sir.

Q And it's your best recollection that this occurred at 9:00 p.m. on August the 9th?

A Yes, sir.

Q Now, let's go back to the bridge a minute where all these policemen were, were any of those officers armed?

A I presume they were. I didn't look at them that close.

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Q Well, were you armed?

A. Yes, sir. I'm always when I'm out.

Q Were your deputies armed?

A. I hope they were.

Q You don't know whether they were or not?

A. I know this, they would get fired if they were not.

Q Sir?

A. I presume they were. They get fired if they don't.

Q All right. You didn't notice whether any of the other policemen had any arms or not, huh?

A. No, sir. I didn't.

Q Has it been your experience that a bunch of policemen show up on a case like this without being armed?

MR. LAMBRIGHT: Your Honor, we are going to object to this line of questioning. I don't have any idea what this has to do with the motion that's before the Court.

THE COURT: Overruled.

MR. GRAY: It goes to the totality of the circumstances, Your Honor.

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MR. GRAY: Whether his will was overborn by the police officers.

THE COURT: Overruled.

MR. GRAY: Thank you, Your Honor.

Q (By Mr. Gray) Sir?

A. Yes, sir.

Q. Could you answer that last question?

A. Would you repeat it, please, sir?

MR. GRAY: Would you read the question back, please?

THE COURT REPORTER: Question: "Has it been your experience that a bunch of policemen show up on a case like this without being armed?"

A. (By the Witness) I don't ever recall working a case like this. I don't understand your question, sir.

Q (By Mr. Gray) Well, let's say a murder case then, officer, just make it as simple as possible.

A. Oh, we usually -- I don't know what you mean armed, but we usually have side arms.

Q Well, that's armed, isn't it? Isn't a pistol an arm?

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A. Well, up there at East Texas, we wear them all the time. Like I said, I don't know what a big city does. We are a little, old country county. We have a different part of the world than you have down here, sir.

Q. Yes, sir. Well, I am from East Texas myself.

A. Pretty good country, isn't it?

Q. Fine, fine.

All right. Then all you can tell us under oath then is that all these policemen from East Texas were probably armed or were armed?

A. They usually are.

Q. You don't know about these city slickers that brought this prisoner up there?

A. They usually are, sir.

Q. Who is the district attorney up there?

A. Mr. Bill Martin.

Q. Was Mr. Bill Martin present when all this occurred?

A. No, sir.

Q. Who is the county attorney?

A. Mr. James Doherty.

Q. Was he present?

A. He was later that evening. He wasn't there --

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Q How much later?

A -- there at the particular time. He met us down at the jail.

Q What time?

A Oh, I'd say probably a quarter -- 8:50, quarter till 9:00 or something like that, sir.

Q What did you say his name was?

A James Doherty.

Q And he is the county attorney, right?

A Yes, sir.

Q Had you had any discussion with the county attorney or the district attorney before Elmer Wayne Henley was turned over to you by the Pasadena police?

A No, sir.

Q You had no discussion with any of the State's lawyers then till 8:45; is that right?

A I believe that's correct, sir.

Q And you had a discussion with the county attorney at that time?

A Yes, sir.

Q Did you have a J.P. or a Justice of the Peace up there anywhere?

A Well, we have a couple, but at that time I wasn't able to get ahold of one. And he came

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in later that night.

Q What time did he come in?

A. I don't recall, sir.

Q What's his name?

A. C. A. Renfro.

Q R-e-n-f-r-o?

A. (Nodding head.)

Q What precinct?

A. Precinct one, sir.

Q How come you couldn't get ahold of him earlier?

A. I wonder the same thing a lot. I need him some time and he is out moving a house or something. You know, he is pretty hard to find.

Q Moving a house?

A. He moves houses, yes, sir, on the side.

Q Well, did you make any effort to get ahold of him?

A. Yes, sir.

Q What did you do? Did you find out where he was moving a house and called out there or send somebody out?

A. We called his house on a number of occasions and finally went out there and, of course, his wife didn't know where he was, but he came in.

Q And this was what time?

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A. Oh, I don't recall, that night. We couldn't get ahold of him till late.

Q. Was it 11:00 o'clock?

A. I'd say we didn't probably get ahold of him till midnight, something like that. I don't remember just exactly what time.

Q. About midnight on August the 9th?

A. Something like that or maybe 11:00 or 11:30. It was after we had booked Mr. Henley in.

Q. All right. It was after 11:00 o'clock probably?

A. Probably, something like that, yes, sir.

Q. Did he come down to the jail?

A. Yes, sir. He came down to the jail.

Q. What did he do when he got down there?

A. The county attorney had drawn up some complaints, and we filed them with him against Mr. Henley.

Q. All right. What did he do? What did the Justice of the Peace Renfro do?

A. He said he would be back there the next morning at 5:30.

Q. All right. Did he ever see Elmer Wayne Henley that night?

A. He did the next morning before daylight.

Q. Before daylight?

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A. Yes, sir.

Q. What time?

A. 5:50 that morning, on the morning of the 10th.

Q. What did he do then?

A. He "arranged" Mr. Henley. I mean, Elmer Wayne Henley.

Q. How did he go about "arranging" him?

A. Well, he give him his warning, so forth.

Q. Were you present when that occurred?

A. Yes, sir.

Q. This was 5:50 a.m. on August the 10th, right?

A. Yes, sir.

Q. All right. He "arranged" him, gave him his warning. What else?

A. He set his bond.

Q. What did he set the bond at?

A. $100,000 in each case.

Q. How many cases?

A. I believe three, sir. Let me see. Yes, sir, it was three cases. No, I beg your pardon, sir. It was in four cases.

Q. Four cases?

A. Yes, sir.

Q. How long did this take?

A. It didn't take but a few minutes.

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Q. Where did it occur?

A. I think there in the benches going to the jail, into my office or where my secretary's office is.

Q. It wasn't in the J.P. office?

A. No, sir. We couldn't hardly get out there for all the people that was outside. There were masses of people there between my jail and the courthouse which is seventy-five to a hundred feet.

Q. Wasn't but one person there to be arraigned was there?

A. That's right, but there was three or four thousand to be handled.

Q. Were these three or four thousand people milling around in the hallway there or around the courthouse?

A. They milled around all night everywhere around there.

Q. What were these, local citizens, or what were they? Who were they?

A. Some of them were local and some of them I had never seen before. I would say most of them I hadn't seen before. I don't know where they come from.

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Q Now, how long had this big crowd been gathered around the jail house there?

A. Well, it started when we come in that afternoon. It built up as the night went on.

Q In other words, from the time that afternoon on the 9th before you booked Mr. Henley into the jail or after you booked him in the jail?

A. During the night, from the time that we got back to the jail. There were lots and lots of people there when we drove back to the jail. It built up as the night went on, the crowd did.

Q Were you concerned about that big crowd? Is that the reason you didn't take this man to the J. P.'s office?

A. Anytime you have a big crowd in East Texas, you better be concerned.

Q Well, what were you concerned about, sir?

A. I was concerned about this Defendant's safety.

Q All right. Did he see the people out there?

A. I'm sure he seen some of them. If he didn't, he could sure hear them.

Q They were making a lot of noise?

A. Well, in my opinion, it would be a lot of noise. Some people may see it different.

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Q Well, let's have your opinion. In your opinion, were they making a lot of noise?

A. They were making a lot of noise.

Q Threats?

A. Oh, (shaking head).

Q What were they doing, just hollering?

A. What does a crowd usually do?

Q I don't know. I am asking you, sir.

A. Well, you are from a big city. I am from the country. I don't get to see many crowds.

Q Well, let me ask you what this crowd was doing that you just told us about.

A. It was just a crowd.

Q Sir?

A. Milling around out there all night, some knocking on the door, some kicking on the door wanting in and so forth.

Q Knocking on what door?

A. My jail door.

Q They were kicking on the doors, wanting in?

A. (Nodding head.)

Q This was going on all night, right?

A. Yes, sir.

Q At least from the time that the word got out that Henley was in your custody; is that right?

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A. We got back and, like I said, there were a number of people there from there on throughout the night.

Q. All right. How many law officers did you have there to handle this crowd during the night and early morning?

A. Just two of us.

Q. You and one of your deputies?

A. No, sir. Me and a State narcotic agent.

Q. Who was the State narcotic agent?

A. Mr. Charles Oliphint.

Q. Charles --

A. Oliphint.

Q. How did he get into the act?

A. I called him and asked him to stay there and operate the radio for me that night.

Q. Well, where did all this other crowd of police officers go? Did they check in the motel or what?

A. I imagine they did. I stayed down at the jail. I don't know where they went.

Q. They weren't concerned with this big crowd?

A. Well, you see I run the jail up there and they don't have any authority in my jail.

Q. Right. So the only officers present that

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night were you and Officer Oliphint, Agent Oliphint; is that right?

A. I believe that's correct, sir.

Q. Where were your deputies? Did they go home and go to sleep?

A. I sent them home where they could get up early the next morning, get another start.

Q. Do you live at the jail?

A. No, sir. I live twelve miles out at the country. I stay in the jail some time. I have bunks back in my office.

Q. You stayed there on this particular occasion?

A. Yes.

Q. Do you usually stay there when you have a prisoner?

A. I do if I have a problem of any type I think is serious.

Q. You figured you had a serious problem this evening?

A. With this case, I did, sir.

Q. Yes, and the crowd?

A. Yes, sir.

Q. Who was taking the telephone calls, if you had any telephone calls, that evening?

A. I took them.

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Q. Did you receive a telephone call any time that evening from Mrs. Henley?

A. Not to my knowledge. I don't recall getting one from a Mrs. Henley.

Q. All right. Now, we are talking about the night of August the 10th, aren't we?

A. No, sir, the 9th.

Q. August the 9th?

A. Yes, sir.

Q. You don't recall receiving a telephone call from Mrs. Henley?

A. Not from a Mrs. Henley, no, sir, I don't.

Q. Are you saying you didn't receive such a call or you just don't remember?

A. I am going to say I didn't receive a call from any lady stating that she was a Mrs. Henley.

Q. All right. Did you receive a call from some fellow that represented himself to be a lawyer?

A. Yes, sir.

Q. What was his name?

A. It's an odd name. At least it's odd to us in East Texas. I don't recall. I heard it yesterday out here in the hall.

Q. Is that Mr. Plotkin?

A. Yes, sir. That's the name.

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Q That's not an East Texas name?

A. I said it's odd to us in East Texas. No, we got Smith and Adams and Jones.

Q Jones, right. Hoyts?

A. Yeah, Hoyts.

Q What time did you receive this call from Mr. Plotkin?

A. Well, sir, I received two from him.

Q What time was the first one?

A. Around 11:00 o'clock.

Q Was that p.m., I presume?

A. Yes, sir.

Q On the 9th?

A. Yes, sir.

Q Tell us what conversation you had with this fellow.

A. He wanted to speak to Mr. Henley.

Q What did you tell him?

A. I told him he was asleep and that I had him upstairs and I had a number of prisoners up there, that I couldn't let him come down just to use the telephone.

Q What time had you tucked Elmer Wayne Henley into bed that evening?

A. I would say about a quarter till 11:00, maybe

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10:30, a quarter till 11:00. I am going to say somewhere in there.

Q. How many other people were in the jail at that time?

A. Oh, I'd say probably six or eight.

Q. You didn't want to disturb them; is that what you said?

A. I don't like to disturb my prisoners after they go to sleep.

Q. Did Mr. Plotkin tell you why he wanted to talk to Mr. Henley?

A. No, sir. He didn't tell me why he wanted to talk to him.

Q. Just tell us what he said and what you said as well as you can remember.

A. He told me he was an Attorney Plotkin and that a Mrs. Henley had wanted him to talk to her son, Mr. Henley, wanted to know if I would bring him down, let him talk to him. That was the first conversation.

Q. This occurred about 11:00 p.m.?

A. Yes, sir.

Q. On the 9th?

A. Yes, sir.

Q. And you told him that you couldn't wake Mr.

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1 Henley up or words to that effect?
2 A. Something to that effect, yes, sir.
3 Q. And you wouldn't let him talk to him?
4 A. Wouldn't be wouldn't let him talk to him; just
5 didn't want to wake the man up.
6 Q. He didn't talk to him, did he?
7 A. No, sir.
8 Q. So you didn't let him, did you?
9 A. Well, I am not running a Holiday Inn. I don't
10 run room service. I don't have any manpower.
11 Q. All right. So at any rate, the answer is you
12 did not let him talk to Mr. Henley?
13 A. No, sir.
14 Q. All right. When did you get the next call?
15 A. About ten minutes till 2:00 that night, which
16 would have been on the 10th.
17 Q. Ten minutes till 2:00?
18 A. Yes, sir.
19 Q. That's a.m. on the 10th?
20 A. Yes, sir.
21 Q. Tell us about that conversation.
22 A. He wanted to know if he came up there if he
23 could see him. And I said, "What time?" He
24 said, "Well, I am going to leave now." I
25 said, "Well, you can see him at 6:00 o'clock."

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He said, "Well, I am on my way."

Q All right. You agreed to let him see Mr. Henley at 6:00 a.m.?

A. That's correct, sir, if he was there at 6:00.

Q Did he show up at 6:00?

A. No, sir. He never did show up.

Q Were you at the jail at 6:00?

A. Yes, sir.

Q What time did you leave the jail that morning?

A. I believe about ten after 6:00.

Q Who left there with you?

A. About the same officers that I named earlier for you, sir.

Q Have you got anything on your booking record there to show what time you left the jail, sheriff?

A. I showed "Released back to Pasadena at 6:10 a.m." Of course, that was as we went out, left the jail.

Q Now, tell me what that means, "Released back to Pasadena"?

A. That's when I took him out of my jail and put him back in their car in my driveway and we left and returned to the scene on Rayburn Lake.

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Q And what was the reason for turning his custody over to the Pasadena officers in San Augustine County?

A. Well, I don't see what difference it is which car you ride in. I don't understand. I don't understand exactly what you mean, sir.

Q Well, let me ask you this: You continued with some sort of investigation in San Augustine County that morning, didn't you?

A. Yes, sir.

Q Now, tell me why you turned custody of this young man over to the Pasadena officers when you were still working on your investigation in San Augustine County.

A. I didn't say I turned him -- I said I let him over to them and put him in their car and returned to the scene just like we left the evening before.

Q What did you say on your card there you read to me, sir?

A. I said, "Released back to Pasadena in their car."

Q Released back to Pasadena?

A. Yes, sir.

Q Nothing on there about in their car, is there?

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A. No, sir, but that's the way it was.

Q. All right. But when you released him back to Pasadena, he didn't go back to Pasadena, did he?

A. I don't know. We went back to Rayburn Lake when he left my --

Q. How long did you stay out at Rayburn Lake?

A. Till about 9:00 o'clock that morning.

Q. So when he was released to Pasadena at 6:10, he didn't go to Pasadena at that time, did he? He didn't leave as far as you know till after 9:00 o'clock?

A. That's right. He left 9:00 or thereabout.

Q. How long was it after Mr. Henley was "arranged" by the J. P. that you left the jail? Was it immediately?

A. It was about twenty minutes, sir.

Q. All right. I take it then you were waiting around for Mr. Plotkin to show up?

A. Yes, sir. He was supposed to be there at 6:00. I don't know what happened, but I told the lady deputy there that if he showed up to call me on the radio and that we'd meet him.

Q. All right. Now, when you went out to Lake Rayburn, all of these officers that you told us

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about before were present; is that correct? Or were any new additions made to the party or any of these leave that you recall?

A. I don't recall any leaving or any additional ones coming, sir.

Q. The same, about the same group?

A. I think, yes, sir.

Q. And at that time then Mr. Henley was in the custody of the two detectives from Pasadena?

A. Well, he was in their car. Of course, my car -- there were rangers behind him. He was in their car. I presume you would say he was in their custody.

Q. All right. Let me ask you this, sheriff: You took custody of Mr. Henley at the bridge; is that right?

A. No, sir. I didn't take custody of him at the bridge.

Q. When did you take custody of him?

A. When he came into my jail, I guess you'd say.

Q. Well, when you first met him, you met him at the bridge; is that right?

A. Yes, sir.

Q. And is there a river or something between San Augustine County and some other county at the

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county line?

A. It's about a mile bridge there, yes, sir, between Angelina and San Augustine County, sir.

Q. That's the county line?

A. That and the end of the lake, yes, sir.

Q. Well, you didn't meet in the middle of the bridge?

A. No, sir.

Q. All right, sir. Was Mr. Henley under arrest at that time?

A. I don't know.

Q. Well, do you think maybe perhaps you could tell us whether or not he was being detained by the police officers?

A. I don't think he was being detained.

Q. Do you think he could have just gotten out of that car and walked on off and nobody would have said a word; is that right?

A. I don't know about that. At the time that I first met them, like I said, he was in a Pasadena unit.

Q. Had some handcuffs on him, didn't he?

A. No, sir. I don't believe he had handcuffs on. He might have, but I don't believe he did.

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1 Q All right. And you just don't know whether
2 or not he was being detained by all those
3 police officers or not; is that your testimony,
4 Sheriff Hoyt?
5 A. I don't know whether he was being detained or
6 to what, you know, what --
7 Q Do you think he was free to leave there?
8 A. I don't know.
9 Q Well, would you have let him leave?
10 A. At that time, I would. I didn't have anything
11 to hold him on.
12 Q All right. So you just don't know whether he
13 he was being detained or not?
14 A. No, sir.
15 Q You don't know whether he was under arrest or
16 not?
17 A. No, sir.
18 Q Now, about 9:00 p.m. when you took him into the
19 jail, do you have an opinion then as to whether
20 he was being detained or not?
21 A. He was.
22 Q At that time?
23 A. Yes, sir.
24 Q How about 8:45 p.m.? Was he being detained
25 then?

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A. Yes, sir.

Q. 7:00 o'clock?

A. No, sir.

Q. 7:30?

A. Around pretty close to it, yes, sir.

Q. And up to that time, you would have let him go on his way if he'd said he wanted to leave?

A. I wouldn't have had any reason to hold him.

Q. All right. And then I take it the next morning when you went out to the lake he was being detained at that time, also?

A. Yes, sir.

Q. And he was under arrest?

A. Yes, sir.

Q. And what time did you say these complaints were filed by the county attorney with the Justice of the Peace?

A. We filed them some time during the night. I don't recall just the exact hour.

Q. Was it on the 9th or the 10th?

A. They would have been filed I am sure on the 9th or thereabout. Like I said, we'd have to get the judge's records. I mean I don't know anything about his records. It would show.

Q. But it's your recollection that this occurred

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on the evening of August the 9th when the complaint was filed or these complaints were filed?

A. I believe, yes, sir, on August the 9th.

Q. Who filed the complaints?

A. I did, sir.

Q. Do you have any recollection as to what time this occurred?

A. I show here, sir, on the 9th.

Q. What time?

A. I don't recall just the exact time. Like I said, we were in pretty much of a problem of trying to keep people, like I said, out of my jail and so forth.

Q. All right. When did you first inform Mr. Henley, if you did, that you had filed complaints against him?

A. The next morning when I served him breakfast.

Q. What time was breakfast?

A. I think breakfast was about 5:15, 5:20, something like that.

Q. 5:15 or 5:20?

A. Something in that line, yes, sir.

Q. That's a.m., I presume?

A. Yes, sir.

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Q What did you serve up there in that jail for breakfast on this particular morning?

A. We give them a choice. We give them a choice of ham and eggs and bacon and sausage or if they don't have any at the time, we let them have hot cakes.

Q All right. Now, you said you weren't running any Holiday Inn. Did you furnish any meal for Mr. Henley on the night of August the 9th after you got him back to the jail at 9:00 o'clock and finally decided that maybe he was in your custody?

A. I offered to get him anything he wanted. He said he didn't want anything to eat when he got back, but some coffee, was all he wanted.

Q All right. So he didn't have anything to eat that evening then?

A. He had the opportunity. He just didn't want anything he said.

Q My question is: He didn't have anything to eat that evening.

A. Not -- he might have had a sandwich or something, I don't recall, coming in from Broaddus, but in the jail, I don't recall serving him a meal.

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Q. Did you have an occasion to call a doctor to come in and see him?

A. Yes, sir.

Q. What is the doctor's name?

A. Doctor Curtis Haley, H-a-l-e-y, I believe.

Q. What time did you call Dr. Haley?

A. I would say about 9:30.

Q. What kind of doctor is he?

A. He's an M.D.

Q. M.D.?

A. Yes, sir.

Q. You called him about 9:30. That was shortly after you got back to the jail?

A. Yes, sir.

Q. On the 9th?

A. Yes, sir.

Q. What was the reason for calling Dr. Haley?

A. Mr. Henley told me he'd like to have a doctor.

Q. All right. Did he tell you why he wanted a doctor?

A. No, sir. I don't think he told me. He just told me he wanted a doctor.

Q. All right. I don't believe the Holiday Inn would furnish a doctor?

A. Well, --

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Q. Was he displaying any symptoms of any kind of ailment, or he just said he wanted a doctor and you sent out and got one?

A. I always do, yes, sir.

Q. All right. Did Dr. Haley come to see him?

A. Yes, sir.

Q. In the jail?

A. Yes, sir, not in the jail, down in my office; same thing, in the building, yes, sir.

Q. Right in the jail building?

A. Yes, sir.

Q. All right. How long did Dr. Haley examine this man?

A. Oh, I'd say he stayed there probably thirty minutes or an hour. I don't recall, sir.

Q. Did he make some sort of examination?

A. Yes, sir.

Q. Were you present?

A. Yes, sir, some of the time. I wasn't present all of the time.

Q. Did he take any sort of history of the ailment or complaint?

A. He took his blood pressure. He listened to his heart. He looked at his eyes, his mouth, things like that. And he talked to him at

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length. Like I said, I wasn't there all the time.

Q. Did he ask him any questions about his background, what led up to this particular complaint that he was having?

A. Oh, you know, I don't remember, like I said, in detail what the doctor talked to him about, but I know he asked him what his problem was and where he was from, stuff like this.

Q. Did the doctor make any notes while he was talking to him?

A. I think he did. I don't recall exactly.

Q. Did he have any kind of recording equipment, or did he just write it down?

A. If he did, I didn't notice it, sir.

Q. Did you have any available at that time?

A. I probably did, but I didn't use it.

Q. Did you use it?

A. No, sir. I didn't use any type of recorder.

Q. Did Dr. Haley prescribe any medication?

A. He left three little bitty pills.

Q. What color?

A. They were green, looked like little BBs.

Q. Three little green BBs. Did he tell you what they were for?

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